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FIRST GENERAL COUNSEL'S REPORT

CELA

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DATE COMPLAINT FILED: 6/20/2012

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DATE OF LAST RESPONSE: 3/20/2013

DATE ACTIVATED: 10/9/2012

EXPIRATION OF SOL: 1/11/2017

ELECTION CYCLE: 2012

COMPLAINANTS:

Obama for America

Democratic National Committee

RESPONDENT:

Crossroads Grassroots Policy Strategies

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(4)

2 U.S.C. § 432

2 U.S.C. § 433

2 U.S.C. § 434

26 U.S.C. § 501(c)

11 C.F.R. § 100.22

INTERNAL REPORTS CHECKED:

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I. INTRODUCTION

This matter involves allegations that Crossroads Grassroots Policy Strategies (“Crossroads GPS”) violated the Federal Election Campaign Act of 1971, as amended, (the “Act”) by failing to organize, register, and report as a political committee in 2012. *See* Compl. at 1-2 (June 20, 2012).

Crossroads GPS acknowledges making and reporting expenditures exceeding the Act’s \$1,000 threshold for political committee status. Resp. at 8-9 (Aug. 9, 2012); *see* 2 U.S.C. § 431(4). Crossroads GPS argues, however, that it is not a political committee under the Act because it lacks the requisite major purpose: the nomination or election of a federal candidate. Resp. at 9. Crossroads GPS’s argument rests on the assertion that the advertisements identified in the Complaint, along with many of its other advertisements, are not express advocacy, *id.* at 18-22, and that its major purpose is “advancing its policy and legislative agenda through grassroots communications and outreach,” *id.* at 9. In our view, the argument is wide of the mark.

As discussed below, the available information regarding Crossroads GPS’s overall conduct in 2012 supports a finding that there is reason to believe that Crossroads GPS had as its major purpose the nomination or election of federal candidates. Accordingly, we recommend that the Commission find reason to believe that Crossroads GPS violated 2 U.S.C. §§ 432, 433, and 434 by failing to organize, register, and report as a political committee, and authorize an investigation.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

1. Crossroads GPS

Crossroads GPS is a non-profit corporation that was founded on June 1, 2010. Resp., Ex.

D. It applied for 501(c)(4) status as a social welfare organization in September 2010; the Internal Revenue Service ("IRS") has yet to act on its application. Crossroads GPS's current officers and directors are Steven Law (President), Steven Duffield (Vice President for Policy), Sally Vastola (Secretary and Board Member), Bobby Burchfield (Chairman), and Jonathan Collegio (Communications Director). See <http://www.crossroadsgps.org/leadership-team>.

Crossroads GPS's Articles of Incorporation state that it "is established primarily to further the common good and general welfare of the citizens of the United States of America." Resp., Ex. D. Crossroads GPS's 2011 Tax Return, submitted as an attachment to the Response, describes its mission as:

Advocat[ing] policy outcomes on pending legislative and regulatory issues such as: health care reform, taxes, spending and deficits, Congressional reform and energy and environment. The purpose of these issue advocacy and grassroots lobbying activities is to promote policies that strengthen the nation's economy, reduce regulation of private sector activity, and restore government to a sound financial footing.

See Resp., Ex. D; 2011 Tax Return at 1, Schedule O.

According to its Articles of Incorporation, to further its stated mission Crossroads GPS "engag[es] in research, education, and communication efforts regarding policy issues of national importance that will impact America's economy and national security in the years ahead." Resp., Ex. D. On its website, Crossroads GPS states that it is "dedicated to holding Washington's feet to the fire on the practical issues that will actually improve our country and our lives." See <http://www.crossroadsgps.org/about>. In its Response, Crossroads GPS states that

its major purpose is "advancing its policy and legislative agenda through grassroots communications and outreach." Resp. at 9.

2. Crossroads GPS's 2012 Activities

Crossroads GPS estimates that it spent \$188,886,899 during calendar year 2012. Supp. Resp. at 9 (Mar. 20, 2013). The group reported spending \$70,968,864 on independent expenditures in 2012. October 2012 Quarterly Report at 1 (October 15, 2012) (\$20,558,081); Year-End 2012 Report at 1 (January 15, 2013) (\$50,410,783).¹ It also reported spending \$192,973 on two electioneering communications ("Every Level" and "Deflect"). FEC Form 9 at 1 (February 22, 2012) (\$40,401); FEC Form 9 at 1 (February 23, 2012) (\$31,218); FEC Form 9 at 1 (February 23, 2012) (\$3,049); FEC Form 9 at 1 (March 22, 2012) (\$118,305).

Crossroads GPS states that the following 2012 activities furthered its exempt purpose:

- Submitting Freedom of Information Act requests and subsequently posting the documents on www.wikicountability.org.
- Providing "endorsements and policy commentary" on a variety of "regulatory activities, policy proposals, and other current events."
- Creating two websites for citizens to contact their representatives.
- Distributing a series of email newsletters ("Issue Directions") to supporters.
- Giving grants to section 501(c)(4) organizations for activities consistent with each organization's exempt purpose.²
- Co-hosting policy forums entitled "How Does the Executive Branch's Abuse of Power Threaten Our Economy?" and "ObamaCare: Then and Now."

¹ In its Supplemental Response, Crossroads GPS includes only the figure from the Year-End 2012 Report (\$50,410,783) in calculating its total independent expenditures for 2012. Supp. Resp. at 9. This report covers only independent expenditures made by Crossroads GPS from October 1 to December 31, 2012. Crossroads GPS, however, also reported spending \$20,558,081 on independent expenditures from July 1, 2012 to September 30, 2012.

² Crossroads GPS states that "[g]rants are accompanied by a letter of transmittal stating that the funds are to be used only for tax-exempt function purposes of the grantee organization and not to be used in connection with any political or non-exempt activity." Resp., Ex. E.

- Producing and airing ads that do not contain express advocacy or its functional equivalent, including December 2012 ads³ related to the “fiscal cliff” negotiations.

Resp., Ex. E; Supp. Resp. at 7.

Crossroads GPS argues that all of this activity shows that it does not have as its major purpose the nomination or election of federal candidates, and therefore it is not a political committee under the Act and Commission regulations.

B. Analysis

1. The Test for Political Committee Status

The Act and Commission regulations define a “political committee” as “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” might be overbroad, reaching “groups engaged purely in issue discussion.” *Id.* at 79. To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or the *major purpose of which is the nomination or election of a candidate.*” *Id.* (emphasis added). Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.

³ Crossroads GPS spent \$500,000 to air “Over” and \$240,000 to air “Balanced” during December 2012. <http://www.crossroadsgps.org/2012/12/crossroads-gps-launches-new-tv-ad-criticizing-obamas-lack-of-balance-in-fiscal-cliff-talks/>; <http://www.crossroadsgps.org/2012/12/crossroads-gps-launches-new-radio-ads-urging-senators-to-support-a-truly-balanced-fiscal-cliff-plan/>.

a. The Commission's Case-By-Case Approach to Major Purpose

Although *Buckley* established the major purpose test, it provided no guidance as to the proper approach to determine an organization's major purpose. See, e.g., *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012), cert. denied, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311) ("RTAA"). The Supreme Court's discussion of major purpose in a subsequent opinion, *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) ("MCFL"), was similarly sparse. See *id.* at 262. In that case, the Court identified an organization's independent spending as a relevant factor in determining an organization's major purpose, but examined the entire record as part of its analysis and did not chart the outer bounds of the test. *Id.* Following *Buckley* and *MCFL*, lower courts have refined the major purpose test — but only to a limited extent.⁴ In large measure, the contours of political committee status — and the major purpose test — have been left to the Commission.⁵

Following *Buckley*, the Commission adopted a policy of determining on a case-by-case basis whether an organization is a political committee, including whether its major purpose is the nomination or election of federal candidates. Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007) (Supplemental Explanation and Justification). The Commission has periodically considered proposed rulemakings that would have determined major purpose by reference to a

⁴ See *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 396 (D.C. Cir. 1981) (stating that political committee "contribution limitations did not apply to . . . groups whose activities did not support an existing 'candidate'" and finding Commission's subpoena was overly intrusive where directed toward "draft" group lacking a "candidate" to support); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 861-62 (D.D.C. 1996) (holding that a group's support of a "farm team" of future potential federal candidates at the state and local level did not make it a political committee under the Act); see also *Unity08 v. FEC*, 596 F.3d 861, 869 (D.C. Cir. 2010) (concluding that an organization "is not subject to regulation as a political committee unless and until it selects a 'clearly identified' candidate").

⁵ Like other administrative agencies, the Commission has the inherent authority to interpret its statute through a case-by-case approach. See *SEC v. Chenery Corp.*, 332 U.S. 194, 202-03 (1947) ("[T]he choice made between proceeding by general rule or by individual . . . litigation is one that lies primarily in the informed discretion of the administrative agency.").

1 bright-line rule — such as proportional (*i.e.*, 50%) or aggregate threshold amounts spent by an
2 organization on federal campaign activity. But the Commission consistently has declined to
3 adopt such bright-line rules. *See* Independent Expenditures; Corporate and Labor Organization
4 Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking);
5 Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance
6 Notice of Proposed Rulemaking); *see also* Summary of Comments and Possible Options on the
7 Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,”
8 Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

9 In 2004, for example, the Commission issued a notice of proposed rulemaking asking
10 whether the agency should adopt a regulatory definition of “political committee.” *See* Political
11 Committee Status, 69 Fed. Reg. 11,736, 11,745-49 (Mar. 11, 2004) (Notice of Proposed
12 Rulemaking). The Commission declined to adopt a bright-line rule, noting that it had been
13 applying the major purpose test “for many years without additional regulatory definitions,” and
14 concluded that “it will continue to do so in the future.” *See* Political Committee Status,
15 Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected
16 Committees, 69 Fed. Reg. 68,056, 68,064-65 (Nov. 23, 2004) (explanation and justification).

17 b. Challenges to the Commission’s Major Purpose Test and the
18 Supplemental E&J
19

20 When the Commission’s 2004 decision not to adopt a regulatory definition was
21 challenged in litigation, the court rejected plaintiffs’ request that the Commission initiate a new
22 rulemaking. *Shays v. FEC*, 424 F. Supp. 2d 100, 117 (D.D.C. 2006) (“*Shays I*”). The district
23 court found, however, that the Commission had “failed to present a reasoned explanation for its
24 decision” to engage in case-by-case decision-making, rather than rulemaking, and remanded the
25 case to the Commission to explain its decision. *Id.* at 116-17.

1 Responding to the remand, the Commission issued a Supplemental Explanation and
2 Justification for its final rules on political committee status to further explain its case-by-case
3 approach and provide the public with additional guidance as to its process for determining
4 political committee status. Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007)
5 ("Supplemental E&J"). The Supplemental E&J explained that "the major purpose doctrine
6 requires fact-intensive analysis of a group's campaign activities compared to its activities
7 unrelated to campaigns." *Id.* at 5601-02. The Commission concluded that the determination of
8 an organization's major purpose "requires the flexibility of a case-by-case analysis of an
9 organization's conduct that is incompatible with a one-size fits-all rule," and that "any list of
10 factors developed by the Commission would not likely be exhaustive in any event, as evidenced
11 by the multitude of fact patterns at issue in the Commission's enforcement actions considering
12 the political committee status of various entities." *Id.*

13 To determine an entity's "major purpose," the Commission explained that it considers a
14 group's "overall conduct," including public statements about its mission, organizational
15 documents, government filings (*e.g.*, IRS notices), the proportion of spending related to "federal
16 campaign activity," and the extent to which fundraising solicitations indicate funds raised will be
17 used to support or oppose specific candidates. *Id.* at 5597, 5605. Among other things, the
18 Commission informed the public that it compares how much of an organization's spending is for
19 "*federal campaign activity*" relative to "activities that [a]re not campaign related." *Id.* at 5601,
20 5605 (emphasis added).

21 To provide the public with additional guidance, the Supplemental E&J referenced
22 enforcement actions on the public record, as well as advisory opinions and filings in civil
23 enforcement cases following the 2004 rulemaking. *Id.* at 5604-05. The Commission noted that

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1 the settlements in several MURs involving section 527 organizations “provide considerable
2 guidance to all organizations” regarding the application of the major purpose test and “reduce
3 any claim of uncertainty because concrete factual examples of the Committee’s political
4 committee analysis are now part of the public record.” *Id.* at 5595, 5604.

5 After the Commission issued the Supplemental E&J, the *Shays I* plaintiffs again
6 challenged, under the Administrative Procedure Act, 5 U.S.C. §§ 551-59, the Commission’s
7 case-by-case approach to political committee status. The court rejected the challenge, upholding
8 the Commission’s case-by-case approach as an appropriate exercise of the agency’s discretion.
9 *Shays v. FEC*, 511 F. Supp. 2d 19, 24 (D.D.C. 2007) (“*Shays II*”). The court recognized that “an
10 organization . . . may engage in many non-electoral activities so that determining its major
11 purpose requires a very close examination of various activities and statements.” *Id.* at 31.

12 Recently, the Fourth Circuit rejected a constitutional challenge to the Commission’s case-
13 by-case determination of major purpose. The court upheld the Commission’s approach, finding
14 that *Buckley* “did not mandate a particular methodology for determining an organization’s major
15 purpose,” and so the Commission was free to make that determination “either through
16 categorical rules or through individualized adjudications.” *RTAA*, 681 F.3d at 556. The court
17 concluded that the Commission’s case-by-case approach was “sensible, . . . consistent with
18 Supreme Court precedent and does not unlawfully deter protected speech.” *Id.* at 558.⁶ The

⁶ The *RTAA* court rejected an argument — similar to the one made by Crossroads GPS here — that the major purpose test must be confined to “(1) examining an organization’s expenditures to see if campaign-related speech amounts to 50% of all expenditures; or (2) reviewing ‘the organization’s central purpose revealed by its organic documents.’” *RTAA*, 681 F.3d at 555. The Fourth Circuit recognized that determining an organization’s major purpose “is inherently a comparative task, and in most instances it will require weighing some of the group’s activities against others.” *Id.* at 556; *see also Koerber v. FEC*, 483 F. Supp. 2d 740 (E.D.N.C. 2008) (denying preliminary relief in challenge to Commission’s approach to determining political committee status, and noting that “an organization’s ‘major purpose’ is inherently comparative and necessarily requires an understanding of an organization’s overall activities, as opposed to its stated purpose”); *FEC v. Malenick*, 310 F. Supp. 2d 230, 234-37 (D.D.C. 2004) (considering organization’s statements in brochures and “fax alerts” sent to potential and actual contributors, as well as its spending influencing federal elections); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859

Fourth Circuit concluded that the Supplemental E&J provides “ample guidance as to the criteria the Commission might consider” in determining an organization’s political committee status and therefore is not unconstitutionally vague. *Id.*; see *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013) (quoting *RTAA* and upholding Commission’s case-by-case method of determining political committee status), *petition for cert. filed* (No. 13-772).⁷

c. Organizational and Reporting Requirements for Political Committees

Political committees — commonly known as “PACs” — must comply with certain organizational and reporting requirements set forth in the Act. PACs must register with the Commission, file periodic reports for disclosure to the public, appoint a treasurer who maintains its records, and identify themselves through “disclaimers” on all of their political advertising, on their websites, and in mass e-mails. See 2 U.S.C. §§ 432-34; 11 C.F.R. §110.11(a)(1).⁸

In the wake of the Supreme Court’s decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), which struck down the Act’s prohibitions on corporate independent expenditures and electioneering communications, the D.C. Circuit held in *SpeechNow* that political committees

(D.D.C. 1996) (“The organization’s purpose may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates.”); *id.* at 864, 866 (applying a fact-intensive inquiry, including review of organizations’ meetings attended by national leaders and organization’s “Political Strategy Campaign Plan and Budget,” and concluding that organization did not have as its major purpose the election of federal candidates).

⁷ The Supreme Court’s decision in *FCC v. Fox Television Stations, Inc.* is not to the contrary. See 132 S. Ct. 2307, 2317 (2012) (“[A] regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved”). In that case, the FCC’s indecency standard was held to be vague for lack of notice when it applied a new stricter standard, *ex post facto*, to the Fox defendants, and when it relied on a single “isolated and ambiguous statement” from a 50-year old administrative decision to support its finding of indecency against the ABC defendants. *Id.* at 2319. Here, in sharp contrast, the Supplemental E&J — which was issued several years before the conduct at issue — provides extensive guidance on the Commission’s approach to major purpose and has withstood both APA and constitutional challenges. See *Center for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012) (“*Madigan*”) (rejecting vagueness challenge to the definition of “political committee” in the Illinois campaign finance statute).

⁸ An organization must register as a political committee when it crosses the \$1,000 threshold and determines, based on the guidance in the Supplemental E&J, that it has the requisite major purpose.

1 that engage only in independent expenditures are not subject to contribution limits.
2 *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) ("*SpeechNow*"). These political
3 committees, often referred to as independent expenditure-only political committees or Super
4 PACs, continue to be subject, however, to the "minimal" reporting requirements of 2 U.S.C.
5 §§ 432, 433, and 434(a), and the organizational requirements of 2 U.S.C. §§ 431(4) and 431(8).⁹
6 *Id.* at 697. These requirements, which promote disclosure, do not, of course, prohibit speech.
7 *RTAA*, 681 F.3d at 552 n.3.

8 Notably, the Supreme Court has stressed that such requirements serve the vital role of
9 disclosure in political discourse. *See Citizens United*, 130 S. Ct. at 916 (recognizing that
10 increased "transparency" resulting from FECA disclosure requirements "enables the electorate to
11 make informed decisions and give proper weight to different speakers and messages"); *Doe v.*
12 *Reed*, 561 U.S. 186, 130 S. Ct. 2811, 2820 (2010) (holding that public disclosure of state
13 referendum petitions serves important government interest of "promot[ing] transparency and
14 accountability in the electoral process," and "preserving the integrity of the electoral process");
15 *see also Doe*, 130 S. Ct. at 2837 (Scalia, J., concurring) ("Requiring people to stand up in public
16 for their political acts fosters civic courage, without which democracy is doomed."); *Madigan*,
17 697 F.3d at 490 (upholding Illinois's campaign finance disclosure provisions against
18 constitutional facial challenge, finding a substantial relation to "Illinois's interest in informing its
19 electorate about who is speaking before an election"). *But cf. Minn. Citizens for Life, Inc. v.*
20 *Swanson*, 692 F.3d 864, 876 (8th Cir. 2012) (striking down certain registration and disclosure
21 provisions of Minnesota's campaign finance law, finding that those obligations as applied to

⁹ Super PACs are also subject to certain source restrictions, such as prohibitions on contributions from foreign nationals (2 U.S.C. § 441e) and federal contractors (2 U.S.C. § 441c).

1 associations that do *not* meet Buckley's "major purpose test" are unduly burdensome and do not
2 match any "sufficiently important disclosure interest").

3 2. Application of the Test for Political Committee Status to Crossroads GPS

4 a. Statutory Threshold
5

6 To assess whether an organization has made an "expenditure," the Commission "analyzes
7 whether expenditures for any of an organization's communications made independently of a
8 candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader
9 definition at 11 C.F.R. § 100.22(b)." Supplemental E&J at 5606. Crossroads GPS reported
10 spending \$70,968,864 on independent expenditures in 2012. *See supra* at 5. Thus, Crossroads
11 GPS far exceeded the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C.
12 § 431(4)(A); 11 C.F.R. § 100.5.

13 b. Major Purpose
14

15 Crossroads GPS states in its responses and on its website, and in its tax returns, that its
16 major purpose is not federal campaign activity, but rather "advancing its policy and legislative
17 agenda through grassroots communications and outreach." Resp. at 9; Supp. Resp. at 7-8;
18 <http://www.crossroadsgps.org/about/>. The Commission noted in the Supplemental E&J that it
19 may consider such statements in its analysis of an organization's major purpose, Supplemental
20 E&J at 5606, but that such statements are not necessarily dispositive. *See Real Truth About*
21 *Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at *14 (E.D. Va. Sept. 24, 2008) ("A
22 declaration by the organization that they are *not* [organized] for an electioneering purpose is not
23 dispositive.") (emphasis in original, alteration added), *aff'd*, 575 F.3d 342 (4th Cir. 2009),
24 *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736,
25 *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*,

81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311). Under the Commission's case-by-case approach, the Commission considers the organization's "overall conduct," including its disbursements, activities, and statements. Supplemental E&J at 5597. In this case, Crossroads GPS's proportion of spending related to federal campaign activity is alone sufficient to establish that its major purpose in 2012 was the nomination or election of federal candidates.

Crossroads GPS reported spending \$70,968,864 on independent expenditures in 2012. In addition, as described below, the available information indicates that Crossroads GPS spent at least \$67,678,000 in 2012 on communications that support or oppose a clearly identified Federal candidate, but do not contain express advocacy. In past enforcement actions, the Commission has determined that funds spent on communications that support or oppose a clearly identified federal candidate, but do not contain express advocacy, should be considered in determining whether that group has federal campaign activity as its major purpose.¹⁰

For example, the Commission has relied, in part, on the following advertisements in determining that an entity was a political committee:

- **"Child's Pay":** The advertisement contains "images of children performing labor-intensive jobs: washing dishes in a restaurant kitchen, vacuuming a hotel hallway, working on an assembly line in a factory, collecting garbage, working at

¹⁰ See Conciliation Agreement ¶ IV.11, MUR 5754 (MoveOn.org Voter Fund) (relying on funds used for advertisements that "opposed" or "criticized" George W. Bush to establish political committee status); Factual and Legal Analysis at 2, MUR 5753 (League of Conservation Voters 527) (finding major purpose satisfied where funds spent on door-to-door and phone bank express advocacy campaign, and also on advertisements "supporting or opposing clearly identified federal candidates, some of which contained express advocacy"); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund) (concluding that PFA VF had met the major purpose test after spending 60% of its funds on communications that "praised George W. Bush's leadership as President and/or criticized Senator Kerry's ability to provide similar leadership"); see also Stipulation for Entry of Consent Judgment ¶ 22, *FEC v. Citizens Club for Growth, Inc.*, Civ. No. 1:05-01851 (Sept. 6, 2007) (entering stipulation of Commission, approved as part of a consent judgment, where organization was treated as a political committee because "the vast majority of [the group's disbursements] were made in connection with federal elections, including, but not limited to, funding for candidate research, polling, and advertisements and other public communications referencing a clearly identified federal candidate").

an auto repair shop, and checking groceries,” and concludes with the question: “Guess who’s going to pay off President Bush’s \$1 trillion deficit?”¹¹

- **“70 Billion More”:** The advertisement shows images of a young boy sitting at a school desk and a young girl with a thermometer in her mouth. The voice-over states: “We could build thousands of new schools, or hire a million new teachers. We could make sure every child has insurance. Instead, George Bush has spent \$150 billion in Iraq and has a secret plan to ask for \$70 billion more. But after four years it’s now clear: George Bush has no plan for taking care of America. Face it. George Bush is not on our side.”¹²
- **“Jobs”:** “Is George Bush listening to us? Since taking office, he’s let oil and energy companies call the shots. Special exemptions from the Clean Water and Clean Air Acts. Halliburton collecting billions in no-bid contracts. Here in Wisconsin, 52,500 manufacturing jobs lost. America is going in the wrong direction. And George Bush just listens to the special interests.”¹³
- **“Yucca You Decide”:** “Yucca Mountain. While everyone plays politics, who’s looking out for Nevada? Eighty-five percent of the nuclear waste could come through Las Vegas. Past businesses. Through communities. By our schools. Accidents happen, and if so, how could Las Vegas, a city and economy built on tourism, recover? Who would come visit us then? The question: did George W. Bush really try and stop Yucca Mountain? Or was he just playing politics?”¹⁴
- **“Finish It”:** [On screen: Images of Mohammed Atta, Osama bin Laden, Khalid Sheik Mohammed, Nick Berg’s killers, and victims of terrorist attacks.] “These people want to kill us. They killed hundreds of innocent children in Russia. Two hundred innocent commuters in Spain. And 3,000 innocent Americans. John Kerry has a 30-year record of supporting cuts in defense and intelligence and endlessly changed positions on Iraq. Would you trust Kerry against these fanatic killers? President Bush didn’t start this war, but he will finish it.”¹⁵
- **“Ashley’s Story”:** This advertisement recounts the story of Ashley Faulkner, whose mother was killed in the September 11, 2001, terrorist attacks, and the

¹¹ Factual and Legal Analysis at 3-4, 12-13, MUR 5754 (MoveOn.Org Voter Fund). The full communication can be viewed at <http://www.youtube.com/watch?v=A9WKimKIyUQ>.

¹² *Id.* at 4, 12-13. The full communication can be viewed at <http://archive.org/details/movf70billionmore>.

¹³ Factual and Legal Analysis at 5, 18, MUR 5753 (League of Conservation Voters 527). The full communication can be viewed at http://archive.org/details/lcv_jobs_102604.

¹⁴ *Id.* at 5, 18. The full communication can be viewed at http://archive.org/details/lcv_yucca_decide.

¹⁵ Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund). The full communication can be viewed at <http://www.livingroomcandidate.org/commercials/2004/finish-it>.

1 interaction she had with President George W. Bush during a visit to Ohio. It
2 closes with Ashley Faulkner's father stating: "What I saw was what I want to see
3 in the heart and in the soul of the man who sits in the highest elected office in our
4 country."¹⁶
5

6 The Commission found that each of these advertisements — though not express advocacy
7 — indicated that the respondents had as their major purpose the nomination or election of federal
8 candidates. These ads evidenced that the organization's major purpose was federal campaign
9 activity because they "support," "oppose," "praise," or "criticize" the federal candidates. *See*
10 *supra* notes 10-16.

11 Likewise, the following ads on which Crossroads GPS spent approximately \$67,678,000,
12 though not express advocacy, oppose or criticize federal candidates and therefore provide
13 evidence that Crossroads GPS had as its major purpose the nomination or election of federal
14 candidates.

15 i. Mountain¹⁷

16 A balanced budget amendment in Washington would stop the mounting national
17 debt that threatens Wisconsin's economy. Since Tammy Baldwin went to
18 Washington, that debt has grown by \$10 trillion. Baldwin said she supported a
19 balanced budget, then voted against a balanced budget amendment. In fact, she
20 voted to raise the debt limit five times. Tell Tammy to stop spending money we
21 don't have and support a balanced budget amendment. Support the New Majority
22 Agenda at NewMajorityAgenda.org.
23

¹⁶ *Id.* The full communication can be viewed at
<http://www.livingroomcandidate.org/commercials/2004/ashleys-story>.

¹⁷ <http://www.youtube.com/watch?v=n3VyUIRXlk8>. Crossroads GPS spent \$250,000 on this ad.
<http://www.crossroadsgps.org/2012/08/crossroads-gps-launches-second-issue-ad-in-wisconsin-focused-on-reckless-washington-spending/>.

ii. Suffered¹⁸

Florida's seniors are facing a health care crisis. Only fourteen physicians to every 1,000 Medicare beneficiaries. But in Washington, Bill Nelson's been voting for the new health care law which cuts Medicare spending by \$700 billion, puts unelected bureaucrats between Florida's three million Medicare recipients and the care they need, hurting Florida's seniors. Tell Senator Nelson it's time to repeal. Support the New Majority Agenda at NewMajorityAgenda.org.

iii. Get Up¹⁹

You get up, you work hard, you do the things that matter most. Another day. But today in Washington, America's debt increased 3.5 billion. 3.5 billion every single day since Jon Tester arrived in the U.S. Senate. Why? Tester voted for the trillion-dollar stimulus and the budget-busting health care law. And he's voted six times to raise the debt limit. So another day means more debt for them. Tell Tester: cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org.

iv. More Martin Spending²⁰

Big Washington spending is not helping New Mexico. And the more money Martin Heinrich is spending is part of the problem. He voted to spend over a trillion dollars on the failed stimulus, like sending almost two million to California to collect ants, almost 300,000 to Texas to study weather on Venus. But back in New Mexico, we've lost 27,000 jobs. Tell Martin: more money wasted is not the solution. Focus on jobs for New Mexico. Support the New Majority Agenda at NewMajorityAgenda.org.

v. Channel²¹

Man on couch: "Oh boy. I need to take my mind off the terrible jobs situation."
Man turns on television to a fake movie trailer, which states: "Coming to you this year: the health care takeover. Taxes on Ohio businesses that could kill jobs. Sherrod Brown gives two thumbs up."
Man changes the channel to a fake advertisement for music compilation: "Call now and get great hits like 'Where did all the jobs go?' and 'Failed Stimulus.'"

¹⁸ <http://www.youtube.com/watch?v=S2fTu4UHsdI>. Crossroads GPS spent a total of \$4,200,000 on "Suffered," "Get Up," "More Martin Spending," and "Channel." <http://www.crossroadsgps.org/2012/08/crossroads-gps-launches-4-2-million-issue-advocacy-push-in-four-states/>.

¹⁹ <http://www.youtube.com/watch?v=IXFzKsuBmM>.

²⁰ http://www.youtube.com/watch?v=KH_yxDXpre8.

²¹ http://www.youtube.com/watch?v=CkUr_OPOTnE.

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1 Man flips channel again to fake news teaser: "Tonight at eleven, how Sherrod Brown's
2 latest vote could mean tax hikes on the small businesses Ohio depends on to create
3 jobs."

4 Man turns off television and sighs, stating: "Tell Sherrod Brown Ohio needs jobs, not
5 more taxes."

6 Narrator: "Support the New Majority Agenda at NewMajorityAgenda.org."
7

8 vi. People Over Government²²

9 Who really creates jobs? Small business or big government? Claire McCaskill sides
10 with government. Claire voted repeatedly for higher taxes on nearly half a million job-
11 creating Missouri businesses. And Claire's vote for the health care law? Another huge
12 tax increase. Meanwhile, Missouri's lost more than 53,000 manufacturing jobs. Tell
13 Claire: stop taxing job creators and start cutting spending. Support the New Majority
14 Agenda at NewMajorityAgenda.org.
15

16 vii. Sense²³

17 It doesn't make sense. With our economy still struggling, Jon Tester votes to raise
18 taxes on Montana families and small businesses. Tester's tax hike could cost hundreds
19 of thousands of U.S. jobs. And Tester's tax-hiking ways aren't new. He was the
20 deciding vote to pass the health care law, which we now know is a massive middle-
21 class tax increase. Tell Tester: stop raising taxes on Montana families and small
22 businesses. Support the New Majority Agenda at NewMajorityAgenda.org.
23

24 viii. Pay Raise²⁴

25 What's Heidi hiding on taxes? As attorney general, Heitkamp supported new taxes on
26 car insurance and energy, even as she awarded her staff a 30% pay raise and allowed
27 staff to fly a taxpayer-funded plane. Now Heitkamp supports higher taxes on North
28 Dakota small businesses, raising taxes on job-creators just as our economy struggles to
29 come back. Tell Heidi: stop supporting higher taxes on small businesses and North
30 Dakota families. Support the New Majority Agenda at NewMajorityAgenda.org.
31

²² <http://www.youtube.com/watch?v=r3JDM2vDXYQ>. Crossroads GPS spent a total of \$3,400,000 on "People Over Government," "Sense," "Pay Raise," and "Holes." <http://www.crossroadsgps.org/2012/08/crossroads-gps-launches-new-issue-ads-in-four-state-focusing-on-tax-hikes-bigger-government/>.

²³ <http://www.youtube.com/watch?v=v5o0LkFours>.

²⁴ http://www.youtube.com/watch?v=FSp6BM7eA_s.

ix. Holes²⁵

When Tim Kaine was governor, spending soared, blowing holes in the budget every year. Kaine backed massive tax hikes every year. His reckless spending was followed by devastating cuts to higher education. Tuition costs exploded. In Washington, Kaine pushed the failed stimulus, which wasted even more. Kaine's failed solutions? Tax hikes, wasteful spending. Tell him: that doesn't create jobs. Push to cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org.

x. News²⁶

News clip: "Good evening. This is the worst economic recovery America has ever had."

Narrator: "Forty-one straight months of unemployment over 8%. Almost 4 million fewer jobs than President Obama predicted. 23 million Americans without full-time work. The results of President Obama's failed stimulus policies."

News clip: "...the worst economic recovery America has ever had."

Narrator: "Tell him: for real job growth, stop spending and cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org."

xi. Tried²⁷

News clip: "...the weakest job-adding quarter in two years..."

Narrator: "It wasn't supposed to be this way. Over three years of crushing unemployment, American manufacturing shrinking again. President Obama's plan? Spend more. He's added four billion in debt every day. The economy's slowing, but our debt keeps growing. Tell him: for real job growth, cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org."

xii. Voice²⁸

Montana said "no" to ObamaCare, but Jon Tester voted "yes." ObamaCare cuts Medicare spending by 500 billion, gives a board of unelected bureaucrats the power to restrict seniors' care, and raises taxes by half a trillion dollars. Instead of listening to

²⁵ <http://www.youtube.com/watch?v=ZellSEuO6Pg>.

²⁶ <http://www.crossroadsgps.org/2012/07/new-ad-news/>. Crossroads GPS spent \$11,000,000 on this ad. <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-new-tv-issue-ad-focused-on-worst-economic-recover-america-has-ever-had/>.

²⁷ <http://www.crossroadsgps.org/2012/07/new-ad-tried/>. Crossroads GPS spent \$8,000,000 on "Tried." <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-new-tv-issue-ad-on-jobs-and-debt/>.

²⁸ <http://www.youtube.com/watch?v=xKEXcnhm7AM>. Crossroads GPS spent a total of \$2,500,000 on "Voice," "Show," and "Ants." <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-three-state-issue-advocacy-push/>.

1 Montana, Jon Tester supported ObamaCare. In fact, he's voted with Obama 95% of the
2 time. Tell Tester: be Montana's voice in Washington. Repeal ObamaCare. Support
3 the New Majority Agenda at NewMajorityAgenda.org.
4

5 xiii. Show²⁹

6 It's time to play "Who's the Biggest Supporter of the Obama Agenda in Ohio?" It's
7 Sherrod Brown. Brown backed Obama's agenda a whopping 95% of the time. He
8 voted for budget-busting ObamaCare that adds seven hundred billion to the deficit, for
9 Obama's 453 billion dollar tax increase, and even supported cap-and-trade, which
10 would have cost Ohio over one hundred thousand jobs. Tell Sherrod Brown: for real
11 job growth, stop spending and cut the debt. Support the New Majority Agenda at
12 NewMajorityAgenda.org.
13

14 xiv. Ants³⁰

15 Narrator: "Tim Kaine left Virginia for Washington and was a cheerleader for massive
16 spending."

17 Clip of Kaine: "The stimulus is working."

18 Narrator: "But it actually wasted money studying ants in Africa."

19 Clip of Kaine: "This stimulus is critically important."

20 Narrator: "Really? How? To upgrade politicians' offices?"

21 Clip of Kaine: "These are investments that will put people to work right away."

22 Narrator: "But it failed miserably. Tell Tim Kaine: for real job growth, stop backing
23 reckless spending. Support the New Majority Agenda at NewMajorityAgenda.org."
24

25 xv. Excuses³¹

26 Narrator: "America's jobless rate is still too high. Barack Obama's got lots of excuses
27 for the bad economy."

28 Clips of Obama: "...headwinds coming from Europe..."; "We've had a string of bad
29 luck"; "...an earthquake in Japan..."; "...an Arab Spring..."; "...an ATM, you don't go
30 to a bank teller..."; "...some things we could not control..."; "...go to the airport, and
31 you're using a kiosk..."; "...we've been a little bit lazy, I think, over the last couple of
32 decades...."

²⁹ <http://www.youtube.com/watch?v=VTsIRspU4Oo>.

³⁰ <http://www.youtube.com/watch?v=CXQc0pOgMGY>.

³¹ <http://www.crossroadsgps.org/2012/07/new-ad-excuses/>. Crossroads GPS states that it spent a total of \$25,000,000 on "News," "Tried," and "Excuses." <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-new-25m-tv-advocacy-blitz-on-debt-and-jobs/>. Because it spent \$11,000,000 on "News" and \$8,000,000 on "Tried," it evidently spent \$6,000,000 on "Excuses."

1 Narrator: "But Obama never blames Washington's wild spending and skyrocketing
2 debt. Tell Obama, for real job growth, cut the debt. Support the New Majority Agenda
3 at NewMajorityAgenda.org."

4
5 xvi. Tax³²

6 Narrator: "Heidi Heitkamp promised..."

7 Clip of Heitkamp: "I would never vote to take away a senior's health care or limit
8 anyone's care."

9 Narrator: "But Heidi endorsed ObamaCare, bragging..."

10 Clip of Heitkamp: "It actually is a budget-saver."

11 Narrator: "But ObamaCare raises half a trillion dollars in taxes on Americans. It cuts
12 Medicare spending by 500 billion dollars and gives unelected bureaucrats the power to
13 restrict seniors' care. Tell Heidi: support the repeal of ObamaCare. Support the New
14 Majority Agenda at NewMajorityAgenda.org."

15
16 xvii. Why³³

17 Narrator: "Heidi Heitkamp promised..."

18 Clip of Heitkamp: "I would never vote to take away a senior's health care or limit
19 anyone's care."

20 Narrator: "But Heidi endorsed ObamaCare, bragging..."

21 Clip of Heitkamp: "It actually is a budget-saver."

22 Narrator: "ObamaCare cuts Medicare spending by five hundred billion dollars, gives
23 unelected bureaucrats the power to restrict seniors' care, and millions of Americans
24 could actually lose their existing health care. Tell Heidi: support the full repeal of
25 ObamaCare. Support the New Majority Agenda at NewMajorityAgenda.org."

26
27 xviii. Spending³⁴

28 Senator Claire McCaskill was a key Obama advisor in passing his failed 1.18 trillion
29 dollar stimulus. Claire's vote sent nearly two million dollars to California to collect
30 ants in Africa, 25 million for new chairlifts and snow-making in Vermont, almost
31 300,000 to Texas to study weather — on Venus — while in Missouri, 16,000 have lost

³² <http://www.youtube.com/watch?v=BZwjPOG7eEg>. Crossroads GPS spent \$180,000 on this ad.
<http://www.crossroadsgps.org/2012/06/crossroads-gps-relaunches-north-dakota-issue-ad-alerts-citizens-to-obamacare-tax/>.

³³ <http://www.youtube.com/watch?v=LEM94pWpBo4>. Crossroads GPS spent \$180,000 on this ad.
<http://www.crossroadsgps.org/2012/06/crossroads-gps-continues-issue-ads-in-north-dakota-calling-for-action-to-repeal-obamacare/>.

³⁴ <http://www.youtube.com/watch?v=ojd7quHa3Sc>. Crossroads GPS spent a total of \$2,000,000 on
"Spending," "Change," and "Cheap." <http://www.crossroadsgps.org/2012/06/crossroads-gps-demands-action-to-stop-reckless-spending-and-obamacare-in-three-state-ad-blitz/>.

1 their jobs. Tell Claire to help Missouri, stop the reckless spending, cut the debt, and
2 support the New Majority Agenda at NewMajorityAgenda.org.

3
4 xix. Change³⁵

5 Narrator: "Heidi Heitkamp supports ObamaCare and predicted..."

6 Clip of Heitkamp: "This bill will change the face of health care."

7 Narrator: "She's right. ObamaCare cuts Medicare spending by 500 billion, gives
8 unelected bureaucrats the power to restrict seniors' care, and now health care costs and
9 premiums are likely to go up. That's not the change we need. Tell Heidi ObamaCare is
10 wrong for North Dakota. Support the New Majority Agenda at
11 NewMajorityAgenda.org."

12
13 xx. Cheap³⁶

14 Narrator: "It's no surprise Sherrod Brown voted for ObamaCare. He supports
15 Obama's agenda 95% of the time. On ObamaCare, Brown said..."

16 Clip of Brown: "This bill pays for itself, actually reduces the deficit."

17 Narrator: "Actually, it adds 700 billion to the deficit, cuts 500 billion from Medicare
18 spending, adds a new tax on Ohio manufacturers. In Sherrod Brown's Washington,
19 talk is cheap. But in Ohio, it's costing us a fortune. Tell Brown: repeal ObamaCare.
20 Support the New Majority Agenda at NewMajorityAgenda.org."

21
22 xxi. Stopwatch³⁷

23 Narrator: "Why isn't the economy stronger? In the seconds it takes to watch this, our
24 national debt will increase \$1.4 million. In 2008, Barack Obama said..."

25 Clip of Obama: "We can't mortgage our children's future on a mountain of debt."

26 Narrator: "Now he's adding four billion in debt every day, borrowing from China for
27 his spending. Every second, growing our debt faster than our economy. Tell Obama:
28 stop the spending. Support the New Majority Agenda at NewMajorityAgenda.org."

29
30 xxii. Obama-Claire³⁸

31 ObamaCare? More like ObamaClaire. Because Senator Claire McCaskill has voted
32 with President Obama 90% of the time, including ObamaCare. Cutting half a trillion in

35 http://www.youtube.com/watch?v=EW3hyhGrT_Y.

36 <http://www.youtube.com/watch?v=4crbHalJJE4>.

37 <http://www.crossroadsgps.org/2012/06/new-ad-stopwatch/>. Crossroads GPS spent \$7,000,000 on this ad.
<http://www.crossroadsgps.org/2012/06/crossroads-gps-launches-7-million-issue-ad-aimed-at-economy-and-debt/>.

38 <http://www.youtube.com/watch?v=523OoAekib8>. Crossroads GPS spent \$516,000 on this ad.
<http://www.crossroadsgps.org/2012/05/crossroads-gps-airs-new-tv-issue-ad-about-claire-mccaskills-support-for-obamacare-2/>.

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1 Medicare spending — cuts that could slash benefits for some Medicare enrollees. And
2 a board of unelected bureaucrats with the power to restrict seniors' access to medical
3 care. ObamaClaire brought us ObamaCare, and that's bad medicine for health care.
4 Tell Claire: support the New Majority Agenda. Repeal ObamaCare. Learn more at
5 NewMajorityAgenda.org.

6
7 xxiii. Basketball³⁹

8 I always loved watching the kids play basketball. I still do, even though things have
9 changed. It's funny. They can't find jobs to get their careers started, and I can't afford
10 to retire. And now we're all living together again. I supported President Obama
11 because he spoke so beautifully. He promised change, but things changed for the
12 worse. Obama started spending like our credit cards have no limit. His health care law
13 made health insurance even more expensive. We've had stimulus and bailouts. Obama
14 added almost \$16,000 in debt for every American. How will my kids pay that off when
15 they can't even find jobs? Now Obama wants more spending and taxes. That won't fix
16 things. I had so many hopes. Cutting taxes and debt and creating jobs—that's the
17 change we need. Tell President Obama to cut the job-killing debt and support the New
18 Majority Agenda at NewMajorityAgenda.org.

19
20 xxiv. Disturbing⁴⁰

21 Bob Kerrey supported the Wall Street bailout while serving on the board of a company
22 that tried to exploit it. Kerrey's company tried a bureaucratic ploy to get bailout funds,
23 but the ploy failed. These schemes were called a disturbing trend by an independent
24 watchdog, violating the spirit of the law to jump on the gravy train. For Bailout Bob
25 Kerrey, it's Wall Street ways, not Nebraska values. Tell him: support balanced
26 budgets, not bailouts.

27
28 xxv. Obama's Promise⁴¹

29 Narrator: "President Obama's agenda promised so much."

30 Clip of Obama: "We must help the millions of homeowners who are facing
31 foreclosure."

32 Narrator: "Promise broken. One in five mortgages are still underwater."

³⁹ <http://www.crossroadsgps.org/2012/05/our-new-ad-basketball/>. Crossroads GPS spent \$9,700,000 on this ad. <http://www.crossroadsgps.org/2012/05/crossroads-gps-launches-9-7-million-tv-issue-ad-basketball-to-frame-debate-on-economy-taxes-and-debt/>.

⁴⁰ <http://www.youtube.com/watch?v=ow5dQMYaq0Q>. Crossroads GPS spent \$260,000 on this ad. <http://www.crossroadsgps.org/2012/05/crossroads-gps-launches-new-tv-ad-on-bob-kerreys-support-for-the-wall-street-bailout/>.

⁴¹ <http://www.crossroadsgps.org/2012/05/new-ad-obamas-promise/>. Crossroads GPS spent \$8,000,000 on this ad. <http://www.crossroadsgps.org/2012/05/crossroads-gps-launches-25-million-tv-ad-initiative-over-next-month-to-frame-debate-on-economy-obamacare-debt/>.

1 Clip of Obama: "If you are a family making less than \$250,000 a year, you will not see
2 your taxes go up."

3 Narrator: "Broken. ObamaCare raises eighteen different taxes."

4 Clip of Obama: "If you like your health care plan, you'll be able to keep your health
5 care plan."

6 Narrator: "Broken. Millions could lose their health care coverage and could be forced
7 into a government pool."

8 Clip of Obama: "Today I'm pledging to cut the deficit we inherited by half by the end
9 of my first term in office."

10 Narrator: "Broken, because he hasn't even come close. We need solutions, not just
11 promises. Tell President Obama to cut the deficit and support the New Majority
12 Agenda at NewMajorityAgenda.org."

13
14 xxvi. Quote Leadership⁴²

15 19,000 jobs lost in Missouri since 2009. 23,000 homes lost to foreclosure in 2011.
16 And what have President Obama and Claire McCaskill been doing? Over a trillion
17 dollars in failed stimulus. Costly ObamaCare, where over a million eligible Missouri
18 seniors could be forced to pay more for their prescription drugs. Tell Senator
19 McCaskill it's time stop supporting Obama's outrageous spending. Say "no" to
20 Obama's proposed trillion dollar deficit.

21
22 xxvii. Way⁴³

23 Narrator: "Remember this from Jon Tester?"

24 Clip of Tester: "Washington has lost its way, and we need to set it right."

25 Narrator: "But in Washington, Tester's way is Obama's way. Tester voted with
26 President Obama 97% of the time. Tester voted for Obama's trillion dollar deficits, for
27 cap-and-trade — a massive energy tax — and for budget-busting ObamaCare. Tell Jon
28 Tester: Obama's way is the wrong way for Montana. Tell him to say 'no' to Obama's
29 proposed trillion dollar deficit."

30
31 xxviii. Hole⁴⁴

32 Nevada's in a hole. Unemployment's the worst in the country. Housing, too. And
33 what's Shelley Berkley been doing in Washington? Voting for tax hikes that would
34 make it worse. Even the largest tax increase in history. She voted for a massive new

⁴² <http://www.youtube.com/watch?v=PATWzQOPeY0>. Crossroads GPS spent a total of \$1,200,000 on "Quote Leadership," "Way," "Hole," "Amazing," and "Similarities."
<http://www.crossroadsgps.org/2012/04/crossroads-gps-ad-launches-issue-ads-in-five-states-targeting-reckless-senate-spending-higher-taxes/>.

⁴³ <http://www.youtube.com/watch?v=xbx0De-BMR4>.

⁴⁴ http://www.youtube.com/watch?v=oMWB_kLBNHc.

1 energy tax that would cost families \$1,600 a year. And on spending, Berkley supported
2 a budget that pushed deficits sky high, piling up debt. Tell Shelley Berkley: vote
3 against higher taxes that would cost more jobs.
4

5 xxix. Amazing⁴⁵

6 Narrator: "Do you think Barack Obama has been amazing?"

7 Clip of Heidi Heitkamp: "I think Barack Obama's going to be amazing, and I think we
8 are on our way to a better United States."

9 Narrator: "Heidi Heitkamp supports ObamaCare, which costs over a trillion dollars,
10 cuts 500 billion in Medicare spending, and gives fifteen unelected bureaucrats the
11 power to restrict seniors' care. Tell Heidi: ObamaCare is not the way to a better
12 United States. Support the repeal of ObamaCare."
13

14 xxx. Similarities⁴⁶

15 Tim Kaine and Barack Obama. One's a former governor, the other is President. Can
16 you spot the similarities? Reckless spending. That's Tim Kaine's billion dollar
17 spending spree. Red ink. Governor Kaine turned a billion dollar surplus into a \$3.7
18 billion shortfall. Taxes. Kaine pushed a billion dollar tax hike. Reckless spending, red
19 ink, higher taxes. They have a lot in common. We work hard and save; Obama and
20 Kaine tax and spend.
21

22 xxxi. Too Much⁴⁷

23 News clip: "Under President Obama, domestic oil production is at an eight-year high."

24 Narrator: "Oh really? His own administration admits production's down where
25 Obama's in charge. The real story..."

26 News clip: "A lot of these increases in production went back to Bush-era decisions,
27 and most of them, of course, are on private land. So you're taking credit for this boost
28 in exploration, which is not really fair."

29 Narrator: "Taking credit for others' hard work: typical Washington. No matter how
30 Obama spins it, gas costs too much. Tell Obama: stop blaming others. Work to pass
31 better energy policies."
32

⁴⁵ <http://www.crossroadsgps.org/2012/04/1349/>.

⁴⁶ <http://www.youtube.com/watch?v=NX-2EDVHRxY>.

⁴⁷ <http://www.crossroadsgps.org/2012/04/new-ad-too-much/>. Crossroads GPS spent \$1,700,000 on this ad.
<http://www.crossroadsgps.org/2012/04/new-crossroads-gps-ad-presses-obama-on-failure-to-keep-gas-prices-low/>.

xxxiii. Deflect (electioneering communication)⁴⁸

Narrator: "Then and now. The difference? President Obama's administration restricted oil production in the Gulf, limited development of American oil shale, and Obama personally lobbied to kill a pipeline bringing oil from Canada. Even now, instead of helping..."

News clip: "At the White House for three weeks, the word has been deflector shield on gas prices, put up the deflector shield."

Narrator: "The President's playing politics. Tell President Obama: bad energy policies mean energy prices we can't afford."

xxxiiii. From There⁴⁹

Here's Claire McCaskill using special interest cash to hide the fact she's voted against what's best for Missouri. Claire claims to protect Medicare? But she voted to cut Medicare spending half a trillion dollars by supporting ObamaCare. Claire claims to cut taxes for the middle class? But she has also voted against extending tax cuts, including the child tax credit, death tax, and marriage penalty. Tell Claire: on Medicare and taxes, start voting in Washington the way you talk in Missouri.

xxxiv. Balloon⁵⁰

America's debt is at an all-time high. But for President Obama and Congressman Leonard Boswell, when spending our money, the sky's the limit. Boswell voted for Obama's stimulus bill. \$825 billion in wasted spending. They bailed out auto companies for 85 billion. And by supporting ObamaCare, Boswell and Obama upped spending another \$700 billion. Tell Congressman Boswell to get his head out of the clouds and stop out of control Washington spending.

⁴⁸ <http://www.crossroadsgps.org/2012/03/new-ad-deflect-2/>. Crossroads GPS spent \$650,000 on this ad. <http://www.crossroadsgps.org/2012/03/crossroads-gps-launches-new-national-tv-ad-focused-on-obamas-failed-energy-policy/>. Crossroads GPS reported \$118,305 of this total as an electioneering communication. <http://images.nictusa.com/pdf/487/12970790487/12970790487.pdf>.

⁴⁹ <http://www.youtube.com/watch?v=8gxo0Xsi7s8>. Crossroads GPS spent \$300,000 on this ad. <http://www.crossroadsgps.org/2012/03/crossroads-gps-launches-tv-ad-exposing-claire-mccaskills-support-of-medicare-cuts-tax-hikes/>.

⁵⁰ <http://www.youtube.com/watch?v=myO98FkQcvs>. Crossroads GPS spent \$77,000 on this ad. <http://www.crossroadsgps.org/2012/03/crossroads-gps-launches-new-issue-ad-in-iowa-targeting-leonard-boswells-sky-high-government-spending/>.

xxxv. Lemmings and Liberals⁵¹

Only two creatures on Earth follow their leaders over a cliff: lemmings and Washington liberals. Senator Claire McCaskill followed the President over a cliff with ObamaCare. Trillions in higher debt. Special interest bailouts. Wasted stimulus spending. Now President Obama is forcing religious hospitals and charities to provide services that violate their beliefs. Republicans and Democrats have called on President Obama to withdraw his extreme rule, but Washington insider Claire McCaskill is tone-deaf to the real world. She's defending this ObamaCare mandate, inserting government into our private lives as never before. Senator McCaskill told voters she wanted to be held accountable. Take her at her word. Call Senator McCaskill at 816-421-1639. Tell her to change her position before she and President Obama destroy freedoms that make America great.

xxxvi. Every Level (electioneering communication)⁵²

Narrator: "He promised..."

Clip of President Obama: "We're investing in a clean energy economy with the potential to create hundreds of thousands of jobs."

Narrator: "Then he gave his political backers billions — a big government fiasco infused with politics at every level. 500 million to Solyndra — now bankrupt. Nearly 100 million to a pet project teetering on default. Laid-off workers: forgotten. Typical Washington. Tell President Obama we need jobs, not more insider deals."

Crossroads GPS argues in its response that none of the above communications can be classified as express advocacy under either 11 C.F.R. §§ 100.22(a) or 100.22(b), or as the functional equivalent of express advocacy under *Wisconsin Right to Life, Inc. v. FEC*, 551 U.S. 449 (2007), and therefore none of them constitute federal campaign activity. Resp. at 9-11; Supp. Resp. at 11. As discussed above, however, that argument fails to come to terms with the Commission's longstanding view — upheld by the courts — that the required major purpose test is not limited solely to express advocacy (or the functional equivalent of express advocacy).

⁵¹ <http://www.youtube.com/watch?v=Qy5eBX7t6XM>. Crossroads GPS spent \$65,000 on the ad. <http://www.crossroadsgps.org/2012/02/crossroads-gps-launches-new-radio-ad-targeting-claire-mccaskills-tone-deaf-support-for-president-obamas-policies/>.

⁵² <http://www.crossroadsgps.org/2012/02/crossroads-gps-launches-new-ad-every-level/>. Crossroads GPS spent \$500,000 on the ad. <http://www.crossroadsgps.org/2012/02/crossroads-gps-launches-new-tv-ad-on-solyndra-fiasco/>. Crossroads GPS reported \$74,670 of this total as electioneering communications. Form 9 (Feb. 22, 2012) (\$40,401); Form 9 (Feb. 23, 2012) (\$31,218); Form 9 (Feb. 23, 2012) (\$3,049).

1 Each of the Crossroads GPS ads features a clearly identified federal candidate, supports or
2 opposes a candidate, and was run in the candidate's respective state or congressional district
3 shortly before a primary or general election. The fact that the ads do not contain express
4 advocacy, or the functional equivalent, does not shield such ads from consideration under the
5 major purpose test.⁵³

6 Nor does *Buckley* support an argument that determining an organization's major purpose
7 is limited to consideration of its express advocacy. The Court first established the major purpose
8 test in the context of its discussion of section 434(e) — a provision that required the disclosure of
9 expenditures by persons *other* than political committees. In order to cure vagueness concerns in
10 that section, the Court construed "expenditure" to reach only express advocacy. *Id.* at 79-80. By
11 contrast, limiting which expenditures *political committees* would have to disclose, the Court held
12 that the term "political committee" — as defined in section 431(4) — "need only encompass
13 organizations that are under the control of a candidate or the major purpose of which is the
14 nomination or election of a candidate." *Id.* at 79. Thus, the two limitations were imposed on two
15 different terms in two different sections of the Act: (1) "express advocacy" as a limitation on
16 "expenditures" made by persons other than political committees pursuant to section 434(e); and
17 (2) "major purpose" as a limitation on the definition of "political committee" pursuant to section
18 431(4). The opinion could have articulated a test that linked the limitations — requiring, for
19 example, that to be considered a political committee an organization's "major purpose must be
20 to *expressly advocate* the nomination or election of a candidate." But the Court did not take that
21 tack. Indeed, the Court noted that even "*partisan committees*," which include "groups within the

⁵³ Similarly, the fact that some of the ads contain a tag line requesting that the viewer call the candidate and tell the candidate to take certain action (*e.g.*, "Tell Congressman Boswell to get his head out of the clouds and stop out of control Washington spending.") does not immunize the communications from being considered federal campaign activity when determining major purpose.

1 control of the candidate or *primarily organized for political activities*" would fall outside the
2 definition of "political committee" *only* if they fail to meet the statutory spending threshold. *Id.*
3 at 80, n.107 (emphasis added).

4 Similarly, in *MCFL*, the Court's opinion nowhere suggests that express advocacy
5 communications are the only kind of "campaign activity" that can satisfy the major purpose test.
6 See *MCFL*, 479 U.S. at 252-53, 262 (political committee requirements inapplicable to
7 "organizations whose major purpose is not *campaign advocacy*," but "political committee" does
8 include organizations with a major purpose of "*campaign activity*") (emphasis added). And
9 many lower federal courts have likewise decided that a determination of major purpose is not
10 restricted to consideration of a group's express advocacy as compared to its other activities.⁵⁴

11 Concerning the time frame under which a group's spending should be considered,
12 Crossroads GPS argues that "political committee status has been judged in the past according to
13 whatever time frame is most appropriate to the case at hand, as opposed to simply applying an

⁵⁴ See *North Carolina Right to Life v. Leake*, 525 F.3d 274, 289 (4th Cir. 2008) (major purpose test may be implemented by examining, *inter alia*, "if the organization spends the majority of its money on *supporting or opposing* candidates") (emphasis added); *Akins v. FEC*, 101 F.3d 731, 742 (D.C. Cir. 1997) ("an organization devoted almost entirely to *campaign spending* could not plead that the administrative burdens associated with such spending were unconstitutional as applied to it") (emphasis added), *vacated on other grounds*, 524 U.S. 11 (1998); *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 393 (D.C. Cir. 1981) (recognizing "the grave constitutional difficulties inherent in construing the term 'political committee' to include groups whose activities are not . . . directly related to *promoting or defeating* a clearly identified 'candidate' for federal office") (emphasis added); *RTAA*, 796 F. Supp. 2d 736, 751 (E.D. Va. 2011) (Recognizing that "the FEC considers whether the group spends money extensively on campaign activities such as canvassing or phone banks, or on express advocacy communications" and "the FEC is entitled to consider the full range of an organization's activities in deciding whether it is a political committee"), *affirmed by* 681 F.3d 544 (4th Cir. June 12, 2012); *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013), *petition for cert. filed* (No. 13-772). But see *New Mexico Youth Organized v. Herrera*, 611 F.3d 669, 678 (10th Cir. 2010) (interpreting *Buckley*'s major purpose test as establishing that regulation as a political committee is only constitutionally permissible (1) when an organization's central purpose is "campaign or election related"; or (2) when a "preponderance of [the organization's] expenditures is for express advocacy or contributions to candidates."); Statement of Reasons, Comm'rs. Petersen and Hunter at 6, MUR 5842 (Economic Freedom Fund) (interpreting the Court's major purpose requirement to mean that "the Act does not reach those 'engaged purely in issue discussion,' but instead can only reach . . . 'communications that expressly advocate the election or defeat of a clearly identified candidate'" (citing *Buckley*, 424 U.S. at 79-80); see also *Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1154 (10th Cir. 2007) (holding a Colorado statute unconstitutional as applied because it "would, as a matter of common sense, operate to encompass a variety of entities based on an expenditure that is insubstantial in relation to their overall budgets").

1 inflexible or predetermined time frame (such as the full calendar year in which the activity at
2 issue occurred).” Supp. Resp. at 3. Even assuming that is correct, the “most appropriate”
3 timeframe provides little guidance and lacks a footing in the Act, judicial decisions, or
4 Commission precedents. Rather, as the Supplemental E&J stated, settled MURs “provide
5 considerable guidance to all organizations” regarding the application of the major purpose test
6 and “reduce any claim of uncertainty because concrete factual examples of the Committee’s
7 political committee analysis are now part of the public record.” Supplemental E&J at 5595,
8 5604. Accordingly, we look to those cases to apply the major purpose test.

9 A calendar year provides the firmest statutory footing for the Commission’s major
10 purpose determination — and is consistent with the Act’s plain language. The Act defines
11 “political committee” in terms of expenditures made or contributions received “*during a*
12 *calendar year.*” 2 U.S.C. § 431(4) (emphasis added). Additionally, in *Malenick*, the court’s
13 holding specifically addressed only one calendar year (1996) because that was the only year
14 during which Triad received \$1,000 in contributions. 310 F. Supp. 2d 230, 237 (D.D.C. 2004)
15 (“Accordingly, because Triad and then Triad Inc.’s major purpose was the nomination or
16 election of specific candidates *in 1996*, and because Triad received contributions aggregating
17 more than \$1,000 *in 1996*, I find that Triad and Triad, Inc., operated as a ‘political committee’ *in*
18 *1996.*”) (emphasis added); *see also GOPAC*, 917 F.Supp. 851, 853 (group founded in 1979, yet
19 court discusses major purpose only in 1989 and 1990). That the *Malenick* decision, which is
20 cited by the 2007 Supplemental E&J, used a calendar year approach confirms that such an
21 approach to major purpose is consistent with both the statutory language and *Buckley*’s judicial
22 gloss on that language. Such an approach is further reflected in several MURs, including those
23 referenced in the 2007 Supplemental E&J as guidance for the Commission’s major purpose test,

1 in which the Commission only considered groups' spending over the period leading up to an
2 election, an approach that is largely consistent with a calendar year approach.⁵⁵

3 Although no time frame aligns perfectly with every past enforcement action,⁵⁶ a calendar
4 year approach falls squarely within the relevant precedent.⁵⁷ Thus, whether Crossroads GPS had
5 the requisite major purpose should be determined by reference to its activities during the 2012
6 calendar year.

⁵⁵ See MUR 5492 (Freedom, Inc.) (analyzing group's admitted major purpose in 2004 even though group was formed in 1962); MURs 5577 and 5620 (National Association of Realtors – 527 Fund) (analyzing NAR-527 Fund's 2004 spending even though group had registered with IRS since 2000); MUR 5755 (New Democrat Network) (analyzing New Democrat Network's 2004 spending while group had existed since at least 1996); MUR 5753 (League of Conservation Voters) (analyzing LCV's 2004 spending even though one of LCV's funds had registered with the IRS as early as 2000); see also MURs 5694, 5910 (Americans for Job Security) (analyzing activity from 2000 through 2006 in determining group's major purpose in 2006, despite the fact that the group was founded in 1997); MUR 5487 (Progress for America VF) (analyzing group's major purpose based on 2004 disbursements where group had raised \$4.6 million and spent \$11.2 million through 2006). Frequently a group's spending only occurs during the calendar year of an election, forming the sole basis for deciding whether its spending has triggered major purpose. See MURs 5511 and 5525 (Swift Boat Veterans and POWs for Truth) (only activity of group was in 2004); MUR 5541 (November Fund) (only activity of group was in 2004); MUR 5568 (Empower Illinois) (only activity of group was in 2004); MURs 5977 and 6005 (American Leadership Project) (only activity of group was in 2008); MUR 6317 (Utah Defenders of Constitutional Integrity) (only activity of group was in 2010).

⁵⁶ The Commission has determined previously that analyzing major purpose on the basis of an entity's fiscal year would be inappropriate, as "neither FECA, as amended, nor any judicial decision interpreting it, has substituted tax status for the conduct-based determination required for political committee status." Supplemental E&J at 5598.

⁵⁷ Some have called OGC's identification of a calendar year as the timeframe for applying the major purpose test an "expansive regulatory sweep" requiring notice and comment rulemaking. Statement of Reasons, Vice Chair McGahn and Comm'rs. Hunter and Petersen at 19, 19 n.64, MUR 6081 (American Issues Project); Statement of Reasons, Chair Goodman and Comm'rs Hunter and Petersen at 23, n.98, MUR 6396 (Crossroads Grassroots Policy Strategies). We disagree. Like all aspects of the major purpose test, the relevant time frame is "a creature of statutory interpretation." See *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 487 (7th Cir. 2012). Because the definition of political committee under 2 U.S.C. § 431(4)(a) specifies the calendar year, using the same period to determine major purpose merely implements that statutory choice. It is not a rulemaking under the APA.

In some matters, OGC or the Commission may not have had a complete record about a group's spending and therefore made reference to spending outside of a calendar year. See First Gen. Counsel's Rpt., MURs 5694, 5910 (Americans for Job Security) (stating "we do not know the full scope of AJS's disbursements" but noting allegations that \$3.8 million out of \$6 million in 2004 spending was on media, while 78% of AJS's activity from 2000 through 2006 was for "political advertising campaign"); Conciliation Agreement, MUR 5487 (Progress for America VF) (analyzing group's major purpose based on 2004 disbursements, 60% of which were spent on nine television advertisements, while noting that the group had also raised \$4.6 million and spent \$11.2 million after the 2004 election through 2006). Nonetheless, the analysis of major purpose specifically referenced the relevant 2004 calendar year spending of those groups. That the Commission acknowledged the facts before it in those cases does not undermine the calendar year approach. To the contrary, as noted, the Commission's analysis in those two MURs tends to support the calendar year approach.

* * * *

In sum, Crossroads GPS appears to have spent approximately \$138,646,864 during 2012 on the type of communications that the Commission considered to be federal campaign activity, and therefore indicative of major purpose, in past enforcement decisions. Crossroads GPS estimates that it spent \$188,886,899 during calendar year 2012. Supp. Resp. at 9. Based on the available information, the amount Crossroads GPS spent on federal campaign activity is approximately 73.4 % of Crossroads GPS's total spending for calendar year 2012. As a result, Crossroads GPS's spending shows that the group's major purpose during 2012 was federal campaign activity (*i.e.*, the nomination or election of a federal candidate).⁵⁸

C. Conclusion

Crossroads GPS made over \$1,000 in expenditures during 2012, and its spending during that calendar year indicates that it had as its major purpose federal campaign activity (*i.e.*, the nomination or election of federal candidates). Accordingly, we recommend that the Commission find reason to believe that Crossroads GPS violated 2 U.S.C. §§ 432, 433, and 434, by failing to organize, register, and report as a political committee, and that the Commission authorize an investigation. Although we believe there is sufficient information at this stage to recommend pre-probable cause conciliation based solely on Crossroads GPS's spending for advertisements, as detailed herein, an investigation of Crossroads GPS's additional 2012 activity, including

⁵⁸ Crossroads GPS argues that its spending on independent expenditures does not constitute the majority of its activity when compared to its total spending since its founding in June 2010. Supp. Resp. at 8-9. But major purpose appears to be satisfied even if we were to analyze Crossroads GPS's spending over the organization's entire active life, an approach previously advocated by some Commissioners. *See e.g.*, Statement of Reasons, Vice Chair McGahn and Comm'rs. Hunter and Petersen at 13-14, MUR 6081 (American Issues Project); Statement of Reasons, Chair Goodman and Comm'rs Hunter and Petersen at 20-25, MUR 6396 (Crossroads Grassroots Policy Strategies). Crossroads GPS estimates that it spent \$253,607,413 "over the life of the organization (through 2012)." Supp. Resp. at 9. Crossroads GPS's 2012 spending on federal campaign activity thus accounted for 55% of the amount it spent during its entire active life (through 2012). In reaching this conclusion, we do not intend to express the view that a finding of major purpose requires clearance of a 50% threshold, but only that the spending on federal campaign activity in this case is alone sufficient to support a finding of major purpose.

1 examination of its fundraising solicitations and advocacy mailings, may furnish evidence of
2 additional spending on federal campaign activity that will enhance the public record and
3 establish definitively the date by which Crossroads GPS should have registered as a political
4 committee.

5 **III. PROPOSED DISCOVERY**


6 We plan to seek information (1) to establish the extent, nature, and cost of Crossroads
7 GPS's federal campaign activity and (2) to identify potential witnesses who may have relevant
8 knowledge of these facts. We also request that the Commission authorize the use of compulsory
9 process, including the issuance of appropriate interrogatories, document subpoenas, and
10 deposition subpoenas, as necessary. The information sought through any discovery would be
11 focused on ascertaining the scope of Crossroads GPS's reporting obligations, and would be
12 consistent with the type of information that the Commission seeks in its analysis of a group's
13 requirements as a political committee.

IV. RECOMMENDATIONS

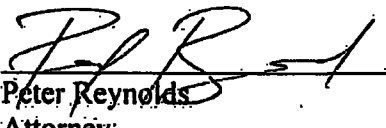
1. Find reason to believe that Crossroads Grassroots Policy Strategies violated 2 U.S.C. §§ 432, 433, and 434.
2. Approve the attached Factual and Legal Analysis.
3. Authorize the use of compulsory process in this matter.
4. Approve the appropriate letters.

Date

3/7/14


Daniel A. Petalas
Associate General Counsel for Enforcement


William Powers
Assistant General Counsel for Enforcement


Peter Reynolds
Attorney

Attachment: Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: Crossroads Grassroots Policy Strategies

MUR: 6596

6
7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed by Obama for America and the
9 Democratic National Committee. See 2 U.S.C. § 437(g)(a)(1). The complaint alleges that
10 Crossroads Grassroots Policy Strategies ("Crossroads GPS") violated the Federal Election
11 Campaign Act of 1971, as amended, (the "Act") by failing to organize, register, and report as a
12 political committee in 2012. See 2 U.S.C. §§ 432, 433, and 434.

13 As discussed below, the Commission finds reason to believe Crossroads GPS violated
14 2 U.S.C. §§ 432, 433, and 434, and authorizes an investigation.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Facts**

17 1. Crossroads GPS

18 Crossroads GPS is a non-profit corporation that was founded on June 1, 2010. Resp., Ex.
19 D. It applied for 501(c)(4) status as a social welfare organization in September 2010; the
20 Internal Revenue Service ("IRS") has yet to act on its application. Crossroads GPS's current
21 officers and directors are Steven Law (President), Steven Duffield (Vice President for Policy),
22 Sally Vastola (Secretary and Board Member), Bobby Burchfield (Chairman), and Jonathan
23 Collegio (Communications Director). See <http://www.crossroadsgps.org/leadership-team>.

24 Crossroads GPS's Articles of Incorporation state that it "is established primarily to
25 further the common good and general welfare of the citizens of the United States of America."

1 Resp., Ex. D. Crossroads GPS's 2011 Tax Return, submitted as an attachment to the Response,
2 describes its mission as:

3 Advocat[ing] policy outcomes on pending legislative and regulatory issues
4 such as: health care reform, taxes, spending and deficits, Congressional
5 reform and energy and environment. The purpose of these issue advocacy
6 and grassroots lobbying activities is to promote policies that strengthen the
7 nation's economy, reduce regulation of private sector activity, and restore
8 government to a sound financial footing.
9

10 See Resp., Ex. D; 2011 Tax Return at 1, Schedule O.

11 According to its Articles of Incorporation, to further its stated mission Crossroads GPS
12 "engag[es] in research, education, and communication efforts regarding policy issues of national
13 importance that will impact America's economy and national security in the years ahead."

14 Resp., Ex. D. On its website, Crossroads GPS states that it is "dedicated to holding
15 Washington's feet to the fire on the practical issues that will actually improve our country and
16 our lives." See <http://www.crossroadsgps.org/about>. In its Response, Crossroads GPS states that
17 its major purpose is "advancing its policy and legislative agenda through grassroots
18 communications and outreach." Resp. at 9.

19 2. Crossroads GPS's 2012 Activities
20

21 Crossroads GPS estimates that it spent \$188,886,899 during calendar year 2012. Supp.
22 Resp. at 9 (Mar. 20, 2013). The group reported spending \$70,968,864 on independent
23 expenditures in 2012. October 2012 Quarterly Report at 1 (October 15, 2012) (\$20,558,081);
24 Year-End 2012 Report at 1 (January 15, 2013) (\$50,410,783).¹ It also reported spending
25 \$192,973 on two electioneering communications ("Every Level" and "Deflect"). FEC Form 9 at

¹ In its Supplemental Response, Crossroads GPS includes only the figure from the Year-End 2012 Report (\$50,410,783) in calculating its total independent expenditures for 2012. Supp. Resp. at 9. This report covers only independent expenditures made by Crossroads GPS from October 1 to December 31, 2012. Crossroads GPS, however, also reported spending \$20,558,081 on independent expenditures from July 1, 2012 to September 30, 2012.

1 1 (February 22, 2012) (\$40,401); FEC Form 9 at 1 (February 23, 2012) (\$31,218); FEC Form 9
2 at 1 (February 23, 2012 (\$3,049); FEC Form 9 at 1 (March 22, 2012) (\$118,305).

3 Crossroads GPS states that the following 2012 activities furthered its exempt purpose:

- 4 • Submitting Freedom of Information Act requests and subsequently posting the
5 documents on www.wikicountability.org.
6
- 7 • Providing “endorsements and policy commentary” on a variety of “regulatory
8 activities, policy proposals, and other current events.”
9
- 10 • Creating two websites for citizens to contact their representatives.
11
- 12 • Distributing a series of email newsletters (“Issue Directions”) to supporters.
13
- 14 • Giving grants to section 501(c)(4) organizations for activities consistent with each
15 organization’s exempt purpose.²
16
- 17 • Co-hosting policy forums entitled “How Does the Executive Branch’s Abuse of
18 Power Threaten Our Economy?” and “ObamaCare: Then and Now.”
19
- 20 • Producing and airing ads that do not contain express advocacy or its functional
21 equivalent, including December 2012 ads³ related to the “fiscal cliff”
22 negotiations.
23

24 Resp., Ex. E; Supp. Resp. at 7.
25

26 Crossroads GPS argues that all of this activity shows that it does not have as its major
27 purpose the nomination or election of federal candidates, and therefore it is not a political
28 committee under the Act and Commission regulations.

² Crossroads GPS states that “[g]rants are accompanied by a letter of transmittal stating that the funds are to be used only for tax-exempt function purposes of the grantee organization and not to be used in connection with any political or non-exempt activity.” Resp., Ex. E.

³ Crossroads GPS spent \$500,000 to air “Over” and \$240,000 to air “Balanced” during December 2012. <http://www.crossroadsgps.org/2012/12/crossroads-gps-launches-new-tv-ad-criticizing-obamas-lack-of-balance-in-fiscal-cliff-talks/>; <http://www.crossroadsgps.org/2012/12/crossroads-gps-launches-new-radio-ads-urging-senators-to-support-a-truly-balanced-fiscal-cliff-plan/>.

B. Analysis

1. The Test for Political Committee Status

The Act and Commission regulations define a “political committee” as “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that defining political committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’” might be overbroad, reaching “groups engaged purely in issue discussion.” *Id.* at 79. To cure that infirmity, the Court concluded that the term “political committee” “need only encompass organizations that are under the control of a candidate or the *major purpose of which is the nomination or election of a candidate.*” *Id.* (emphasis added). Accordingly, under the statute as thus construed, an organization that is not controlled by a candidate must register as a political committee only if (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election of federal candidates.

a. The Commission’s Case-By-Case Approach to Major Purpose

Although *Buckley* established the major purpose test, it provided no guidance as to the proper approach to determine an organization’s major purpose. *See, e.g., Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311) (“*RTAA*”). The Supreme Court’s discussion of major purpose in a subsequent opinion; *Massachusetts Citizens for Life v. FEC*, 479 U.S. 238 (1986) (“*MCFL*”), was similarly sparse. *See id.* at 262. In that case, the Court identified an organization’s independent spending as a relevant factor in determining an organization’s major purpose, but examined the entire record as part of its analysis and did not chart the outer bounds of the test.

1 *Id.* Following *Buckley* and *MCFL*, lower courts have refined the major purpose test — but only
2 to a limited extent.⁴ In large measure, the contours of political committee status — and the
3 major purpose test — have been left to the Commission.⁵

4 Following *Buckley*, the Commission adopted a policy of determining on a case-by-case
5 basis whether an organization is a political committee, including whether its major purpose is the
6 nomination or election of federal candidates. Political Committee Status, 72 Fed. Reg. 5595
7 (Feb. 7, 2007) (Supplemental Explanation and Justification). The Commission has periodically
8 considered proposed rulemakings that would have determined major purpose by reference to a
9 bright-line rule — such as proportional (*i.e.*, 50%) or aggregate threshold amounts spent by an
10 organization on federal campaign activity. But the Commission consistently has declined to
11 adopt such bright-line rules. *See* Independent Expenditures; Corporate and Labor Organization
12 Expenditures, 57 Fed. Reg. 33,548, 33,558-59 (July 29, 1992) (Notice of Proposed Rulemaking);
13 Definition of Political Committee, 66 Fed. Reg. 13,681, 13,685-86 (Mar. 7, 2001) (Advance
14 Notice of Proposed Rulemaking); *see also* Summary of Comments and Possible Options on the
15 Advance Notice of Proposed Rulemaking on the Definition of “Political Committee,”
16 Certification (Sept. 27, 2001) (voting 6-0 to hold proposed rulemaking in abeyance).

⁴ *See* *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 396 (D.C. Cir. 1981) (stating that political committee “contribution limitations did not apply to . . . groups whose activities did not support an existing ‘candidate’” and finding Commission’s subpoena was overly intrusive where directed toward “draft” group lacking a “candidate” to support); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 861-62 (D.D.C. 1996) (holding that a group’s support of a “farm team” of future potential federal candidates at the state and local level did not make it a political committee under the Act); *see also* *Unity08 v. FEC*, 596 F.3d 861, 869 (D.C. Cir. 2010) (concluding that an organization “is not subject to regulation as a political committee unless and until it selects a ‘clearly identified’ candidate”).

⁵ Like other administrative agencies, the Commission has the inherent authority to interpret its statute through a case-by-case approach. *See* *SEC v. Chenery Corp.*, 332 U.S. 194, 202-03 (1947) (“[T]he choice made between proceeding by general rule or by individual . . . litigation is one that lies primarily in the informed discretion of the administrative agency.”).

1 In 2004, for example, the Commission issued a notice of proposed rulemaking asking
2 whether the agency should adopt a regulatory definition of “political committee.” *See* Political
3 Committee Status, 69 Fed. Reg. 11,736, 11,745-49 (Mar. 11, 2004) (Notice of Proposed
4 Rulemaking). The Commission declined to adopt a bright-line rule, noting that it had been
5 applying the major purpose test “for many years without additional regulatory definitions,” and
6 concluded that “it will continue to do so in the future.” *See* Political Committee Status,
7 Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected
8 Committees, 69 Fed. Reg. 68,056, 68,064-65 (Nov. 23, 2004) (explanation and justification).

9 b. Challenges to the Commission’s Major Purpose Test and the
10 Supplemental E&J
11

12 When the Commission’s 2004 decision not to adopt a regulatory definition was
13 challenged in litigation, the court rejected plaintiffs’ request that the Commission initiate a new
14 rulemaking. *Shays v. FEC*, 424 F. Supp. 2d 100, 117 (D.D.C. 2006) (“*Shays I*”). The district
15 court found, however, that the Commission had “failed to present a reasoned explanation for its
16 decision” to engage in case-by-case decision-making, rather than rulemaking, and remanded the
17 case to the Commission to explain its decision. *Id.* at 116-17.

18 Responding to the remand, the Commission issued a Supplemental Explanation and
19 Justification for its final rules on political committee status to further explain its case-by-case
20 approach and provide the public with additional guidance as to its process for determining
21 political committee status. Political Committee Status, 72 Fed. Reg. 5595 (Feb. 7, 2007)
22 (“Supplemental E&J”). The Supplemental E&J explained that “the major purpose doctrine
23 requires fact-intensive analysis of a group’s campaign activities compared to its activities
24 unrelated to campaigns.” *Id.* at 5601-02. The Commission concluded that the determination of

1 an organization's major purpose "requires the flexibility of a case-by-case analysis of an
2 organization's conduct that is incompatible with a one-size fits-all rule," and that "any list of
3 factors developed by the Commission would not likely be exhaustive in any event, as evidenced
4 by the multitude of fact patterns at issue in the Commission's enforcement actions considering
5 the political committee status of various entities." *Id.*

6 To determine an entity's "major purpose," the Commission explained that it considers a
7 group's "overall conduct," including public statements about its mission, organizational
8 documents, government filings (e.g., IRS notices), the proportion of spending related to "federal
9 campaign activity," and the extent to which fundraising solicitations indicate funds raised will be
10 used to support or oppose specific candidates. *Id.* at 5597, 5605. Among other things, the
11 Commission informed the public that it compares how much of an organization's spending is for
12 "federal campaign activity" relative to "activities that [a]re not campaign related." *Id.* at 5601,
13 5605 (emphasis added).

14 To provide the public with additional guidance, the Supplemental E&J referenced
15 enforcement actions on the public record, as well as advisory opinions and filings in civil
16 enforcement cases following the 2004 rulemaking. *Id.* at 5604-05. The Commission noted that
17 the settlements in several MURs involving section 527 organizations "provide considerable
18 guidance to all organizations" regarding the application of the major purpose test and "reduce
19 any claim of uncertainty because concrete factual examples of the Committee's political
20 committee analysis are now part of the public record." *Id.* at 5595, 5604.

21 After the Commission issued the Supplemental E&J, the *Shays I* plaintiffs again
22 challenged, under the Administrative Procedure Act, 5 U.S.C. §§ 551-59, the Commission's
23 case-by-case approach to political committee status. The court rejected the challenge, upholding

1 the Commission's case-by-case approach as an appropriate exercise of the agency's discretion.
2 *Shays v. FEC*, 511 F. Supp. 2d 19, 24 (D.D.C. 2007) ("*Shays II*"). The court recognized that "an
3 organization . . . may engage in many non-electoral activities so that determining its major
4 purpose requires a very close examination of various activities and statements." *Id.* at 31.

5 Recently, the Fourth Circuit rejected a constitutional challenge to the Commission's case-
6 by-case determination of major purpose. The court upheld the Commission's approach, finding
7 that *Buckley* "did not mandate a particular methodology for determining an organization's major
8 purpose," and so the Commission was free to make that determination "either through
9 categorical rules or through individualized adjudications." *RTAA*, 681 F.3d at 556. The court
10 concluded that the Commission's case-by-case approach was "sensible, . . . consistent with
11 Supreme Court precedent and does not unlawfully deter protected speech." *Id.* at 558.⁶ The
12 Fourth Circuit concluded that the Supplemental E&J provides "ample guidance as to the criteria
13 the Commission might consider" in determining an organization's political committee status and
14 therefore is not unconstitutionally vague. *Id.*; see *Free Speech v. FEC*, 720 F.3d 788 (10th Cir.

⁶ The *RTAA* court rejected an argument — similar to the one made by Crossroads GPS here — that the major purpose test must be confined to "(1) examining an organization's expenditures to see if campaign-related speech amounts to 50% of all expenditures; or (2) reviewing 'the organization's central purpose revealed by its organic documents.'" *RTAA*, 681 F.3d at 555. The Fourth Circuit recognized that determining an organization's major purpose "is inherently a comparative task, and in most instances it will require weighing some of the group's activities against others." *Id.* at 556; see also *Koerber v. FEC*, 483 F. Supp. 2d 740 (E.D.N.C. 2008) (denying preliminary relief in challenge to Commission's approach to determining political committee status, and noting that "an organization's 'major purpose' is inherently comparative and necessarily requires an understanding of an organization's overall activities, as opposed to its stated purpose"); *FEC v. Malenick*, 310 F. Supp. 2d 230, 234-37 (D.D.C. 2004) (considering organization's statements in brochures and "fax alerts" sent to potential and actual contributors, as well as its spending influencing federal elections); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) ("The organization's purpose may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates."); *id.* at 864, 866 (applying a fact-intensive inquiry, including review of organizations' meetings attended by national leaders and organization's "Political Strategy Campaign Plan and Budget," and concluding that organization did not have as its major purpose the election of federal candidates).

2013) (quoting *RTAA* and upholding Commission's case-by-case method of determining political committee status), *petition for cert. filed* (No. 13-772).⁷

c. Organizational and Reporting Requirements for Political Committees

Political committees — commonly known as “PACs” — must comply with certain organizational and reporting requirements set forth in the Act. PACs must register with the Commission, file periodic reports for disclosure to the public, appoint a treasurer who maintains its records, and identify themselves through “disclaimers” on all of their political advertising, on their websites, and in mass e-mails. *See* 2 U.S.C. §§ 432-34; 11 C.F.R. §110.11(a)(1).⁸

In the wake of the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), which struck down the Act's prohibitions on corporate independent expenditures and electioneering communications, the D.C. Circuit held in *SpeechNow* that political committees that engage only in independent expenditures are not subject to contribution limits. *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (“*SpeechNow*”). These political committees, often referred to as independent expenditure-only political committees or Super PACs, continue to be subject, however, to the “minimal” reporting requirements of 2 U.S.C.

⁷ The Supreme Court's decision in *FCC v. Fox Television Stations, Inc.* is not to the contrary. *See* 132 S. Ct. 2307, 2317 (2012) (“[A] regulation is not vague because it may at times be difficult to prove an incriminating fact but rather because it is unclear as to what fact must be proved”). In that case, the FCC's indecency standard was held to be vague for lack of notice when it applied a new stricter standard, *ex post facto*, to the Fox defendants, and when it relied on a single “isolated and ambiguous statement” from a 50-year old administrative decision to support its finding of indecency against the ABC defendants. *Id.* at 2319. Here, in sharp contrast, the Supplemental E&J — which was issued several years before the conduct at issue — provides extensive guidance on the Commission's approach to major purpose and has withstood both APA and constitutional challenges. *See Center for Individual Freedom v. Madigan*, 697 F.3d 464 (7th Cir. 2012) (“*Madigan*”) (rejecting vagueness challenge to the definition of “political committee” in the Illinois campaign finance statute).

⁸ An organization must register as a political committee when it crosses the \$1,000 threshold and determines, based on the guidance in the Supplemental E&J, that it has the requisite major purpose.

1 §§ 432, 433, and 434(a), and the organizational requirements of 2 U.S.C. §§ 431(4) and 431(8).⁹

2 *Id.* at 697. These requirements, which promote disclosure, do not, of course, prohibit speech.

3 *RTAA*, 681 F.3d at 552 n.3.

4 Notably, the Supreme Court has stressed that such requirements serve the vital role of
5 disclosure in political discourse. *See Citizens United*, 130 S. Ct. at 916 (recognizing that
6 increased “transparency” resulting from FECA disclosure requirements “enables the electorate to
7 make informed decisions and give proper weight to different speakers and messages”); *Doe v.*
8 *Reed*, 561 U.S. 186, 130 S. Ct. 2811, 2820 (2010) (holding that public disclosure of state
9 referendum petitions serves important government interest of “promot[ing] transparency and
10 accountability in the electoral process,” and “preserving the integrity of the electoral process”);
11 *see also Doe*, 130 S. Ct. at 2837 (Scalia, J., concurring) (“Requiring people to stand up in public
12 for their political acts fosters civic courage, without which democracy is doomed.”); *Madigan*,
13 697 F.3d at 490 (upholding Illinois’s campaign finance disclosure provisions against
14 constitutional facial challenge, finding a substantial relation to “Illinois’s interest in informing its
15 electorate about who is speaking before an election”). *But cf. Minn. Citizens for Life, Inc. v.*
16 *Swanson*, 692 F.3d 864, 876 (8th Cir. 2012) (striking down certain registration and disclosure
17 provisions of Minnesota’s campaign finance law, finding that those obligations as applied to
18 associations that do *not* meet Buckley’s “major purpose test” are unduly burdensome and do not
19 match any “sufficiently important disclosure interest”).

⁹ Super PACs are also subject to certain source restrictions, such as prohibitions on contributions from foreign nationals (2 U.S.C. § 441e) and federal contractors (2 U.S.C. § 441c).

2. Application of the Test for Political Committee Status to Crossroads GPS

a. Statutory Threshold

To assess whether an organization has made an “expenditure,” the Commission “analyzes whether expenditures for any of an organization’s communications made independently of a candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader definition at 11 C.F.R. § 100.22(b).” Supplemental E&J at 5606. Crossroads GPS reported spending \$70,968,864 on independent expenditures in 2012. *See supra* at 5. Thus, Crossroads GPS far exceeded the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5.

b. Major Purpose

Crossroads GPS states in its responses and on its website, and in its tax returns, that its major purpose is not federal campaign activity, but rather “advancing its policy and legislative agenda through grassroots communications and outreach.” Resp. at 9; Supp. Resp. at 7-8; <http://www.crossroadsgps.org/about/>. The Commission noted in the Supplemental E&J that it may consider such statements in its analysis of an organization’s major purpose, Supplemental E&J at 5606, but that such statements are not necessarily dispositive. *See Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at *14 (E.D. Va. Sept. 24, 2008) (“A declaration by the organization that they are *not* [organized] for an electioneering purpose is not dispositive.”) (emphasis in original, alteration added), *aff’d*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311). Under the Commission’s case-by-case approach, the Commission considers the organization’s “overall conduct,” including its

1 disbursements, activities, and statements. Supplemental E&J at 5597. In this case, Crossroads
2 GPS's proportion of spending related to federal campaign activity is alone sufficient to establish
3 that its major purpose in 2012 was the nomination or election of federal candidates.

4 Crossroads GPS reported spending \$70,968,864 on independent expenditures in 2012. In
5 addition, as described below, the available information indicates that Crossroads GPS spent at
6 least \$67,678,000 in 2012 on communications that support or oppose a clearly identified Federal
7 candidate, but do not contain express advocacy. In past enforcement actions, the Commission
8 has determined that funds spent on communications that support or oppose a clearly identified
9 federal candidate, but do not contain express advocacy, should be considered in determining
10 whether that group has federal campaign activity as its major purpose.¹⁰

11 For example, the Commission has relied, in part, on the following advertisements in
12 determining that an entity was a political committee:

- 13 • **"Child's Pay":** The advertisement contains "images of children performing
14 labor-intensive jobs: washing dishes in a restaurant kitchen, vacuuming a hotel
15 hallway, working on an assembly line in a factory, collecting garbage, working at
16 an auto repair shop, and checking groceries," and concludes with the question:
17 "Guess who's going to pay off President Bush's \$1 trillion deficit?"¹¹
18

¹⁰ See Conciliation Agreement ¶ IV.11, MUR 5754 (MoveOn.org Voter Fund) (relying on funds used for advertisements that "opposed" or "criticized" George W. Bush to establish political committee status); Factual and Legal Analysis at 2, MUR 5753 (League of Conservation Voters 527) (finding major purpose satisfied where funds spent on door-to-door and phone bank express advocacy campaign, and also on advertisements "supporting or opposing clearly identified federal candidates, some of which contained express advocacy"); Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund) (concluding that PFA VF had met the major purpose test after spending 60% of its funds on communications that "praised George W. Bush's leadership as President and/or criticized Senator Kerry's ability to provide similar leadership"); see also Stipulation for Entry of Consent Judgment ¶ 22, *FEC v. Citizens Club for Growth, Inc.*, Civ. No. 1:05-01851 (Sept. 6, 2007) (entering stipulation of Commission, approved as part of a consent judgment, where organization was treated as a political committee because "the vast majority of [the group's disbursements] were made in connection with federal elections, including, but not limited to, funding for candidate research, polling, and advertisements and other public communications referencing a clearly identified federal candidate").

¹¹ Factual and Legal Analysis at 3-4, 12-13, MUR 5754 (MoveOn.Org Voter Fund). The full communication can be viewed at <http://www.youtube.com/watch?v=A9WKImKIyUQ>.

- 1 • **"70 Billion More"**: The advertisement shows images of a young boy sitting at a
2 school desk and a young girl with a thermometer in her mouth. The voice-over
3 states: "We could build thousands of new schools, or hire a million new teachers.
4 We could make sure every child has insurance. Instead, George Bush has spent
5 \$150 billion in Iraq and has a secret plan to ask for \$70 billion more. But after
6 four years it's now clear: George Bush has no plan for taking care of America.
7 Face it. George Bush is not on our side."¹²
8
- 9 • **"Jobs"**: "Is George Bush listening to us? Since taking office, he's let oil and
10 energy companies call the shots. Special exemptions from the Clean Water and
11 Clean Air Acts. Halliburton collecting billions in no-bid contracts. Here in
12 Wisconsin, 52,500 manufacturing jobs lost. America is going in the wrong
13 direction. And George Bush just listens to the special interests."¹³
14
- 15 • **"Yucca You Decide"**: "Yucca Mountain. While everyone plays politics, who's
16 looking out for Nevada? Eighty-five percent of the nuclear waste could come
17 through Las Vegas. Past businesses. Through communities. By our schools.
18 Accidents happen, and if so, how could Las Vegas, a city and economy built on
19 tourism, recover? Who would come visit us then? The question: did George W.
20 Bush really try and stop Yucca Mountain? Or was he just playing politics?"¹⁴
21
- 22 • **"Finish It"**: [On screen: Images of Mohammed Atta, Osama bin Laden, Khalid
23 Sheik Mohammed, Nick Berg's killers, and victims of terrorist attacks.] "These
24 people want to kill us. They killed hundreds of innocent children in Russia. Two
25 hundred innocent commuters in Spain. And 3,000 innocent Americans. John
26 Kerry has a 30-year record of supporting cuts in defense and intelligence and
27 endlessly changed positions on Iraq. Would you trust Kerry against these fanatic
28 killers? President Bush didn't start this war, but he will finish it."¹⁵
29
- 30 • **"Ashley's Story"**: This advertisement recounts the story of Ashley Faulkner,
31 whose mother was killed in the September 11, 2001, terrorist attacks, and the
32 interaction she had with President George W. Bush during a visit to Ohio. It
33 closes with Ashley Faulkner's father stating: "What I saw was what I want to see

¹² *Id.* at 4, 12-13. The full communication can be viewed at <http://archive.org/details/movf70billionmore>.

¹³ Factual and Legal Analysis at 5, 18, MUR 5753 (League of Conservation Voters 527). The full communication can be viewed at http://archive.org/details/lcv_jobs_102604.

¹⁴ *Id.* at 5, 18. The full communication can be viewed at http://archive.org/details/lcv_yucca_decide.

¹⁵ Conciliation Agreement ¶ IV.14, MUR 5487 (Progress for America Voter Fund). The full communication can be viewed at <http://www.livingroomcandidate.org/commercials/2004/finish-it>.

1 in the heart and in the soul of the man who sits in the highest elected office in our
2 country.”¹⁶
3

4 The Commission found that each of these advertisements — though not express advocacy
5 — indicated that the respondents had as their major purpose the nomination or election of federal
6 candidates. These ads evidenced that the organization’s major purpose was federal campaign
7 activity because they “support,” “oppose,” “praise,” or “criticize” the federal candidates. *See*
8 *supra* notes 10-16.

9 Likewise, the following ads on which Crossroads GPS spent approximately \$67,678,000,
10 though not express advocacy, oppose or criticize federal candidates and therefore provide
11 evidence that Crossroads GPS had as its major purpose the nomination or election of federal
12 candidates.

13 i. Mountain¹⁷

14 A balanced budget amendment in Washington would stop the mounting national
15 debt that threatens Wisconsin’s economy. Since Tammy Baldwin went to
16 Washington, that debt has grown by \$10 trillion. Baldwin said she supported a
17 balanced budget, then voted against a balanced budget amendment. In fact, she
18 voted to raise the debt limit five times. Tell Tammy to stop spending money we
19 don’t have and support a balanced budget amendment. Support the New Majority
20 Agenda at NewMajorityAgenda.org.
21

22 ii. Suffered¹⁸

23 Florida’s seniors are facing a health care crisis. Only fourteen physicians to every
24 1,000 Medicare beneficiaries. But in Washington, Bill Nelson’s been voting for the

¹⁶ *Id.* The full communication can be viewed at
<http://www.livingroomcandidate.org/commercials/2004/ashleys-story>.

¹⁷ <http://www.youtube.com/watch?v=n3VyUIRXlk8>. Crossroads GPS spent \$250,000 on this ad.
<http://www.crossroadsgps.org/2012/08/crossroads-gps-launches-second-issue-ad-in-wisconsin-focused-on-reckless-washington-spending/>.

¹⁸ <http://www.youtube.com/watch?v=S2fTu4UHsdI>. Crossroads GPS spent a total of \$4,200,000 on
“Suffered,” “Get Up,” “More Martin Spending,” and “Channel.” <http://www.crossroadsgps.org/2012/08/crossroads-gps-launches-4-2-million-issue-advocacy-push-in-four-states/>.

1 new health care law which cuts Medicare spending by \$700 billion, puts unelected
2 bureaucrats between Florida's three million Medicare recipients and the care they need,
3 hurting Florida's seniors. Tell Senator Nelson it's time to repeal. Support the New
4 Majority Agenda at NewMajorityAgenda.org.

5
6 iii. Get Up¹⁹

7 You get up, you work hard, you do the things that matter most. Another day. But
8 today in Washington, America's debt increased 3.5 billion. 3.5 billion every single day
9 since Jon Tester arrived in the U.S. Senate. Why? Tester voted for the trillion-dollar
10 stimulus and the budget-busting health care law. And he's voted six times to raise the
11 debt limit. So another day means more debt for them. Tell Tester: cut the debt.
12 Support the New Majority Agenda at NewMajorityAgenda.org.

13
14 iv. More Martin Spending²⁰

15 Big Washington spending is not helping New Mexico. And the more money Martin
16 Heinrich is spending is part of the problem. He voted to spend over a trillion dollars on
17 the failed stimulus, like sending almost two million to California to collect ants, almost
18 300,000 to Texas to study weather on Venus. But back in New Mexico, we've lost
19 27,000 jobs. Tell Martin: more money wasted is not the solution. Focus on jobs for
20 New Mexico. Support the New Majority Agenda at NewMajorityAgenda.org.

21
22 v. Channel²¹

23 Man on couch: "Oh boy. I need to take my mind off the terrible jobs situation."
24 Man turns on television to a fake movie trailer, which states: "Coming to you this year:
25 the health care takeover. Taxes on Ohio businesses that could kill jobs. Sherrod
26 Brown gives two thumbs up."
27 Man changes the channel to a fake advertisement for music compilation: "Call now
28 and get great hits like 'Where did all the jobs go?' and 'Failed Stimulus.'"
29 Man flips channel again to fake news teaser: "Tonight at eleven, how Sherrod Brown's
30 latest vote could mean tax hikes on the small businesses Ohio depends on to create
31 jobs."
32 Man turns off television and sighs, stating: "Tell Sherrod Brown Ohio needs jobs, not
33 more taxes."
34 Narrator: "Support the New Majority Agenda at NewMajorityAgenda.org."
35

¹⁹ <http://www.youtube.com/watch?v=IXFzKsuBmIM>.

²⁰ http://www.youtube.com/watch?v=KH_vxDXpre8.

²¹ http://www.youtube.com/watch?v=CkUr_OPOTnE.

vi. People Over Government²²

Who really creates jobs? Small business or big government? Claire McCaskill sides with government. Claire voted repeatedly for higher taxes on nearly half a million job-creating Missouri businesses. And Claire's vote for the health care law? Another huge tax increase. Meanwhile, Missouri's lost more than 53,000 manufacturing jobs. Tell Claire: stop taxing job creators and start cutting spending. Support the New Majority Agenda at NewMajorityAgenda.org.

vii. Sense²³

It doesn't make sense. With our economy still struggling, Jon Tester votes to raise taxes on Montana families and small businesses. Tester's tax hike could cost hundreds of thousands of U.S. jobs. And Tester's tax-hiking ways aren't new. He was the deciding vote to pass the health care law, which we now know is a massive middle-class tax increase. Tell Tester: stop raising taxes on Montana families and small businesses. Support the New Majority Agenda at NewMajorityAgenda.org.

viii. Pay Raise²⁴

What's Heidi hiding on taxes? As attorney general, Heitkamp supported new taxes on car insurance and energy, even as she awarded her staff a 30% pay raise and allowed staff to fly a taxpayer-funded plane. Now Heitkamp supports higher taxes on North Dakota small businesses, raising taxes on job-creators just as our economy struggles to come back. Tell Heidi: stop supporting higher taxes on small businesses and North Dakota families. Support the New Majority Agenda at NewMajorityAgenda.org.

ix. Holes²⁵

When Tim Kaine was governor, spending soared, blowing holes in the budget every year. Kaine backed massive tax hikes every year. His reckless spending was followed by devastating cuts to higher education. Tuition costs exploded. In Washington, Kaine pushed the failed stimulus, which wasted even more. Kaine's failed solutions? Tax hikes, wasteful spending. Tell him: that doesn't create jobs. Push to cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org.

²² <http://www.youtube.com/watch?v=r3JDM2vDXyQ>. Crossroads GPS spent a total of \$3,400,000 on "People Over Government," "Sense," "Pay Raise," and "Holes." <http://www.crossroadsgps.org/2012/08/crossroads-gps-launches-new-issue-ads-in-four-states-focusing-on-tax-hikes-bigger-government/>.

²³ <http://www.youtube.com/watch?v=v5o0LkFours>.

²⁴ http://www.youtube.com/watch?v=FSp6BM7eA_s.

²⁵ <http://www.youtube.com/watch?v=ZellSEuO6Pg>.

x. News²⁶

News clip: "Good evening. This is the worst economic recovery America has ever had."

Narrator: "Forty-one straight months of unemployment over 8%. Almost 4 million fewer jobs than President Obama predicted. 23 million Americans without full-time work. The results of President Obama's failed stimulus policies."

News clip: "...the worst economic recovery America has ever had."

Narrator: "Tell him: for real job growth, stop spending and cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org."

xi. Tried²⁷

News clip: "...the weakest job-adding quarter in two years..."

Narrator: "It wasn't supposed to be this way. Over three years of crushing unemployment, American manufacturing shrinking again. President Obama's plan? Spend more. He's added four billion in debt every day. The economy's slowing, but our debt keeps growing. Tell him: for real job growth, cut the debt. Support the New Majority Agenda at NewMajorityAgenda.org."

xii. Voice²⁸

Montana said "no" to ObamaCare, but Jon Tester voted "yes." ObamaCare cuts Medicare spending by 500 billion, gives a board of unelected bureaucrats the power to restrict seniors' care, and raises taxes by half a trillion dollars. Instead of listening to Montana, Jon Tester supported ObamaCare. In fact, he's voted with Obama 95% of the time. Tell Tester: be Montana's voice in Washington. Repeal ObamaCare. Support the New Majority Agenda at NewMajorityAgenda.org.

xiii. Show²⁹

It's time to play "Who's the Biggest Supporter of the Obama Agenda in Ohio?" It's Sherrod Brown. Brown backed Obama's agenda a whopping 95% of the time. He

²⁶ <http://www.crossroadsgps.org/2012/07/new-ad-news/>. Crossroads GPS spent \$11,000,000 on this ad. <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-new-tv-issue-ad-focused-on-worst-economic-recover-america-has-ever-had/>.

²⁷ <http://www.crossroadsgps.org/2012/07/new-ad-tried/>. Crossroads GPS spent \$8,000,000 on "Tried." <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-new-tv-issue-ad-on-jobs-and-debt/>.

²⁸ <http://www.youtube.com/watch?v=xKEXcnhm7AM>. Crossroads GPS spent a total of \$2,500,000 on "Voice," "Show," and "Ants." <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-three-state-issue-advocacy-push/>.

²⁹ <http://www.youtube.com/watch?v=VTsIRspU4Qo>.

1 voted for budget-busting ObamaCare that adds seven hundred billion to the deficit, for
2 Obama's 453 billion dollar tax increase, and even supported cap-and-trade, which
3 would have cost Ohio over one hundred thousand jobs. Tell Sherrod Brown: for real
4 job growth, stop spending and cut the debt. Support the New Majority Agenda at
5 NewMajorityAgenda.org.

6
7 xiv. Ants³⁰

8 Narrator: "Tim Kaine left Virginia for Washington and was a cheerleader for massive
9 spending."

10 Clip of Kaine: "The stimulus is working."

11 Narrator: "But it actually wasted money studying ants in Africa."

12 Clip of Kaine: "This stimulus is critically important."

13 Narrator: "Really? How? To upgrade politicians' offices?"

14 Clip of Kaine: "These are investments that will put people to work right away."

15 Narrator: "But it failed miserably. Tell Tim Kaine: for real job growth, stop backing
16 reckless spending. Support the New Majority Agenda at NewMajorityAgenda.org."

17
18 xv. Excuses³¹

19 Narrator: "America's jobless rate is still too high. Barack Obama's got lots of excuses
20 for the bad economy."

21 Clips of Obama: "...headwinds coming from Europe..."; "We've had a string of bad
22 luck"; "...an earthquake in Japan..."; "...an Arab Spring..."; "...an ATM, you don't go
23 to a bank teller..."; "...some things we could not control..."; "...go to the airport, and
24 you're using a kiosk..."; "...we've been a little bit lazy, I think, over the last couple of
25 decades...."

26 Narrator: "But Obama never blames Washington's wild spending and skyrocketing
27 debt. Tell Obama, for real job growth, cut the debt. Support the New Majority Agenda
28 at NewMajorityAgenda.org."

29
30 xvi. Tax³²

31 Narrator: "Heidi Heitkamp promised..."

³⁰ <http://www.youtube.com/watch?v=CXQc0pOgMGY>.

³¹ <http://www.crossroadsgps.org/2012/07/new-ad-excuses/>. Crossroads GPS states that it spent a total of \$25,000,000 on "News," "Tried," and "Excuses." <http://www.crossroadsgps.org/2012/07/crossroads-gps-launches-new-25m-tv-advocacy-blitz-on-debt-and-jobs/>. Because it spent \$11,000,000 on "News" and \$8,000,000 on "Tried," it evidently spent \$6,000,000 on "Excuses."

³² <http://www.youtube.com/watch?v=BZwjPOG7eEg>. Crossroads GPS spent \$180,000 on this ad. <http://www.crossroadsgps.org/2012/06/crossroads-gps-relaunches-north-dakota-issue-ad-alerts-citizens-to-obamacare-tax/>.

1 Clip of Heitkamp: "I would never vote to take away a senior's health care or limit
2 anyone's care."

3 Narrator: "But Heidi endorsed ObamaCare, bragging..."

4 Clip of Heitkamp: "It actually is a budget-saver."

5 Narrator: "But ObamaCare raises half a trillion dollars in taxes on Americans. It cuts
6 Medicare spending by 500 billion dollars and gives unelected bureaucrats the power to
7 restrict seniors' care. Tell Heidi: support the repeal of ObamaCare. Support the New
8 Majority Agenda at NewMajorityAgenda.org."

9
10 xvii. Why³³

11 Narrator: "Heidi Heitkamp promised..."

12 Clip of Heitkamp: "I would never vote to take away a senior's health care or limit
13 anyone's care."

14 Narrator: "But Heidi endorsed ObamaCare, bragging..."

15 Clip of Heitkamp: "It actually is a budget-saver."

16 Narrator: "ObamaCare cuts Medicare spending by five hundred billion dollars, gives
17 unelected bureaucrats the power to restrict seniors' care, and millions of Americans
18 could actually lose their existing health care. Tell Heidi: support the full repeal of
19 ObamaCare. Support the New Majority Agenda at NewMajorityAgenda.org."

20
21 xviii. Spending³⁴

22 Senator Claire McCaskill was a key Obama advisor in passing his failed 1.18 trillion
23 dollar stimulus. Claire's vote sent nearly two million dollars to California to collect
24 ants in Africa, 25 million for new chairlifts and snow-making in Vermont, almost
25 300,000 to Texas to study weather — on Venus — while in Missouri, 16,000 have lost
26 their jobs. Tell Claire to help Missouri, stop the reckless spending, cut the debt, and
27 support the New Majority Agenda at NewMajorityAgenda.org.

28
29 xix. Change³⁵

30 Narrator: "Heidi Heitkamp supports ObamaCare and predicted..."

31 Clip of Heitkamp: "This bill will change the face of health care."

32 Narrator: "She's right. ObamaCare cuts Medicare spending by 500 billion, gives
33 unelected bureaucrats the power to restrict seniors' care, and now health care costs and

³³ <http://www.youtube.com/watch?v=LEM94pWpBo4>. Crossroads GPS spent \$180,000 on this ad.
<http://www.crossroadsgps.org/2012/06/crossroads-gps-continues-issue-ads-in-north-dakota-calling-for-action-to-repeal-obamacare/>.

³⁴ <http://www.youtube.com/watch?v=ojd7quHa3Sc>. Crossroads GPS spent a total of \$2,000,000 on
"Spending," "Change," and "Cheap." <http://www.crossroadsgps.org/2012/06/crossroads-gps-demands-action-to-stop-reckless-spending-and-obamacare-in-three-state-ad-blitz/>.

³⁵ http://www.youtube.com/watch?v=EW3hyhGrT_Y.

1 premiums are likely to go up. That's not the change we need. Tell Heidi ObamaCare is
2 wrong for North Dakota. Support the New Majority Agenda at
3 NewMajorityAgenda.org."

4
5 xx. Cheap³⁶

6 Narrator: "It's no surprise Sherrod Brown voted for ObamaCare. He supports
7 Obama's agenda 95% of the time. On ObamaCare, Brown said..."

8 Clip of Brown: "This bill pays for itself, actually reduces the deficit."

9 Narrator: "Actually, it adds 700 billion to the deficit, cuts 500 billion from Medicare
10 spending, adds a new tax on Ohio manufacturers. In Sherrod Brown's Washington,
11 talk is cheap. But in Ohio, it's costing us a fortune. Tell Brown: repeal ObamaCare.
12 Support the New Majority Agenda at NewMajorityAgenda.org."

13
14 xxi. Stopwatch³⁷

15 Narrator: "Why isn't the economy stronger? In the seconds it takes to watch this, our
16 national debt will increase \$1.4 million. In 2008, Barack Obama said..."

17 Clip of Obama: "We can't mortgage our children's future on a mountain of debt."

18 Narrator: "Now he's adding four billion in debt every day, borrowing from China for
19 his spending. Every second, growing our debt faster than our economy. Tell Obama:
20 stop the spending. Support the New Majority Agenda at NewMajorityAgenda.org."

21
22 xxii. Obama-Claire³⁸

23 ObamaCare? More like ObamaClaire. Because Senator Claire McCaskill has voted
24 with President Obama 90% of the time, including ObamaCare. Cutting half a trillion in
25 Medicare spending — cuts that could slash benefits for some Medicare enrollees. And
26 a board of unelected bureaucrats with the power to restrict seniors' access to medical
27 care. ObamaClaire brought us ObamaCare, and that's bad medicine for health care.
28 Tell Claire: support the New Majority Agenda. Repeal ObamaCare. Learn more at
29 NewMajorityAgenda.org.
30

³⁶ <http://www.youtube.com/watch?v=4crbHaldJE4>.

³⁷ <http://www.crossroadsgps.org/2012/06/new-ad-stopwatch/>. Crossroads GPS spent \$7,000,000 on this ad.
<http://www.crossroadsgps.org/2012/06/crossroads-gps-launches-7-million-issue-ad-aimed-at-economy-and-debt/>.

³⁸ <http://www.youtube.com/watch?v=523OoAekib8>. Crossroads GPS spent \$516,000 on this ad.
<http://www.crossroadsgps.org/2012/05/crossroads-gps-airs-new-tv-issue-ad-about-claire-mccaskills-support-for-obamacare-2/>.

xxiii. Basketball³⁹

I always loved watching the kids play basketball. I still do, even though things have changed. It's funny. They can't find jobs to get their careers started, and I can't afford to retire. And now we're all living together again. I supported President Obama because he spoke so beautifully. He promised change, but things changed for the worse. Obama started spending like our credit cards have no limit. His health care law made health insurance even more expensive. We've had stimulus and bailouts. Obama added almost \$16,000 in debt for every American. How will my kids pay that off when they can't even find jobs? Now Obama wants more spending and taxes. That won't fix things. I had so many hopes. Cutting taxes and debt and creating jobs—that's the change we need. Tell President Obama to cut the job-killing debt and support the New Majority Agenda at NewMajorityAgenda.org.

xxiv. Disturbing⁴⁰

Bob Kerrey supported the Wall Street bailout while serving on the board of a company that tried to exploit it. Kerrey's company tried a bureaucratic ploy to get bailout funds, but the ploy failed. These schemes were called a disturbing trend by an independent watchdog, violating the spirit of the law to jump on the gravy train. For Bailout Bob Kerrey, it's Wall Street ways, not Nebraska values. Tell him: support balanced budgets, not bailouts.

xxv. Obama's Promise⁴¹

Narrator: "President Obama's agenda promised so much."

Clip of Obama: "We must help the millions of homeowners who are facing foreclosure."

Narrator: "Promise broken. One in five mortgages are still underwater."

Clip of Obama: "If you are a family making less than \$250,000 a year, you will not see your taxes go up."

Narrator: "Broken. ObamaCare raises eighteen different taxes."

Clip of Obama: "If you like your health care plan, you'll be able to keep your health care plan."

³⁹ <http://www.crossroadsgps.org/2012/05/our-new-ad-basketball/>. Crossroads GPS spent \$9,700,000 on this ad. <http://www.crossroadsgps.org/2012/05/crossroads-gps-launches-9-7-million-tv-issuc-ad-basketball-to-frame-debate-on-economy-taxes-and-debt/>.

⁴⁰ <http://www.youtube.com/watch?v=ow5dOMYaq0Q>. Crossroads GPS spent \$260,000 on this ad. <http://www.crossroadsgps.org/2012/05/crossroads-gps-launches-new-tv-ad-on-bob-kerreys-support-for-the-wall-street-bailout/>.

⁴¹ <http://www.crossroadsgps.org/2012/05/new-ad-obamas-promise/>. Crossroads GPS spent \$8,000,000 on this ad. <http://www.crossroadsgps.org/2012/05/crossroads-gps-launches-25-million-tv-ad-initiative-over-next-month-to-frame-debate-on-economy-obamacare-debt/>.

1 Narrator: "Broken. Millions could lose their health care coverage and could be forced
2 into a government pool."

3 Clip of Obama: "Today I'm pledging to cut the deficit we inherited by half by the end
4 of my first term in office."

5 Narrator: "Broken, because he hasn't even come close. We need solutions, not just
6 promises. Tell President Obama to cut the deficit and support the New Majority
7 Agenda at NewMajorityAgenda.org."

8
9 xxvi. Quote Leadership⁴²

10 19,000 jobs lost in Missouri since 2009. 23,000 homes lost to foreclosure in 2011.
11 And what have President Obama and Claire McCaskill been doing? Over a trillion
12 dollars in failed stimulus. Costly ObamaCare, where over a million eligible Missouri
13 seniors could be forced to pay more for their prescription drugs. Tell Senator
14 McCaskill it's time stop supporting Obama's outrageous spending. Say "no" to
15 Obama's proposed trillion dollar deficit.

16
17 xxvii. Way⁴³

18 Narrator: "Remember this from Jon Tester?"

19 Clip of Tester: "Washington has lost its way, and we need to set it right."

20 Narrator: "But in Washington, Tester's way is Obama's way. Tester voted with
21 President Obama 97% of the time. Tester voted for Obama's trillion dollar deficits, for
22 cap-and-trade — a massive energy tax — and for budget-busting ObamaCare. Tell Jon
23 Tester: Obama's way is the wrong way for Montana. Tell him to say 'no' to Obama's
24 proposed trillion dollar deficit."

25
26 xxviii. Hole⁴⁴

27 Nevada's in a hole. Unemployment's the worst in the country. Housing, too. And
28 what's Shelley Berkley been doing in Washington? Voting for tax hikes that would
29 make it worse. Even the largest tax increase in history. She voted for a massive new
30 energy tax that would cost families \$1,600 a year. And on spending, Berkley supported
31 a budget that pushed deficits sky high, piling up debt. Tell Shelley Berkley: vote
32 against higher taxes that would cost more jobs.
33

⁴² <http://www.youtube.com/watch?v=PATWzOOPeY0>. Crossroads GPS spent a total of \$1,200,000 on "Quote Leadership," "Way," "Hole," "Amazing," and "Similarities."
<http://www.crossroadsgps.org/2012/04/crossroads-gps-ad-launches-issue-ads-in-five-states-targeting-reckless-senate-spending-higher-taxes/>.

⁴³ <http://www.youtube.com/watch?v=xbx0De-BMR4>.

⁴⁴ http://www.youtube.com/watch?v=oMWB_kLBNHc.

xxix. Amazing⁴⁵

Narrator: "Do you think Barack Obama has been amazing?"

Clip of Heidi Heitkamp: "I think Barack Obama's going to be amazing, and I think we are on our way to a better United States."

Narrator: "Heidi Heitkamp supports ObamaCare, which costs over a trillion dollars, cuts 500 billion in Medicare spending, and gives fifteen unelected bureaucrats the power to restrict seniors' care. Tell Heidi: ObamaCare is not the way to a better United States. Support the repeal of ObamaCare."

xxx. Similarities⁴⁶

Tim Kaine and Barack Obama. One's a former governor, the other is President. Can you spot the similarities? Reckless spending. That's Tim Kaine's billion dollar spending spree. Red ink. Governor Kaine turned a billion dollar surplus into a \$3.7 billion shortfall. Taxes. Kaine pushed a billion dollar tax hike. Reckless spending, red ink, higher taxes. They have a lot in common. We work hard and save; Obama and Kaine tax and spend.

xxxi. Too Much⁴⁷

News clip: "Under President Obama, domestic oil production is at an eight-year high."

Narrator: "Oh really? His own administration admits production's down where Obama's in charge. The real story..."

News clip: "A lot of these increases in production went back to Bush-era decisions, and most of them, of course, are on private land. So you're taking credit for this boost in exploration, which is not really fair."

Narrator: "Taking credit for others' hard work: typical Washington. No matter how Obama spins it, gas costs too much. Tell Obama: stop blaming others. Work to pass better energy policies."

⁴⁵ <http://www.crossroadsgps.org/2012/04/1349/>.

⁴⁶ <http://www.youtube.com/watch?v=NX-2EDVHRxY>.

⁴⁷ <http://www.crossroadsgps.org/2012/04/new-ad-too-much/>. Crossroads GPS spent \$1,700,000 on this ad. <http://www.crossroadsgps.org/2012/04/new-crossroads-gps-ad-presses-obama-on-failure-to-keep-gas-prices-low/>.

xxxii. Deflect (electioneering communication)⁴⁸

Narrator: "Then and now. The difference? President Obama's administration restricted oil production in the Gulf, limited development of American oil shale, and Obama personally lobbied to kill a pipeline bringing oil from Canada. Even now, instead of helping..."

News clip: "At the White House for three weeks, the word has been deflector shield on gas prices, put up the deflector shield."

Narrator: "The President's playing politics. Tell President Obama: bad energy policies mean energy prices we can't afford."

xxxiii. From There⁴⁹

Here's Claire McCaskill using special interest cash to hide the fact she's voted against what's best for Missouri. Claire claims to protect Medicare? But she voted to cut Medicare spending half a trillion dollars by supporting ObamaCare. Claire claims to cut taxes for the middle class? But she has also voted against extending tax cuts, including the child tax credit, death tax, and marriage penalty. Tell Claire: on Medicare and taxes, start voting in Washington the way you talk in Missouri.

xxxiv. Balloon⁵⁰

America's debt is at an all-time high. But for President Obama and Congressman Leonard Boswell, when spending our money, the sky's the limit. Boswell voted for Obama's stimulus bill. \$825 billion in wasted spending. They bailed out auto companies for 85 billion. And by supporting ObamaCare, Boswell and Obama upped spending another \$700 billion. Tell Congressman Boswell to get his head out of the clouds and stop out of control Washington spending.

⁴⁸ <http://www.crossroadsgps.org/2012/03/new-ad-deflect-2/>. Crossroads GPS spent \$650,000 on this ad. <http://www.crossroadsgps.org/2012/03/crossroads-gps-launches-new-national-tv-ad-focused-on-obamas-failed-energy-policy/>. Crossroads GPS reported \$118,305 of this total as an electioneering communication. <http://images.nictusa.com/pdf/487/12970790487/12970790487.pdf>.

⁴⁹ <http://www.youtube.com/watch?v=8gxo0Xsi7s8>. Crossroads GPS spent \$300,000 on this ad. <http://www.crossroadsgps.org/2012/03/crossroads-gps-launches-tv-ad-exposing-claire-mccaskills-support-of-medicare-cuts-tax-hikes/>.

⁵⁰ <http://www.youtube.com/watch?v=myO98FkOcv5>. Crossroads GPS spent \$77,000 on this ad. <http://www.crossroadsgps.org/2012/03/crossroads-gps-launches-new-issue-ad-in-iowa-targeting-leonard-boswells-sky-high-government-spending/>.

xxxv. Lemmings and Liberals⁵¹

Only two creatures on Earth follow their leaders over a cliff: lemmings and Washington liberals. Senator Claire McCaskill followed the President over a cliff with ObamaCare. Trillions in higher debt. Special interest bailouts. Wasted stimulus spending. Now President Obama is forcing religious hospitals and charities to provide services that violate their beliefs. Republicans and Democrats have called on President Obama to withdraw his extreme rule, but Washington insider Claire McCaskill is tone-deaf to the real world. She's defending this ObamaCare mandate, inserting government into our private lives as never before. Senator McCaskill told voters she wanted to be held accountable. Take her at her word. Call Senator McCaskill at 816-421-1639. Tell her to change her position before she and President Obama destroy freedoms that make America great.

xxxvi. Every Level (electioneering communication)⁵²

Narrator: "He promised..."

Clip of President Obama: "We're investing in a clean energy economy with the potential to create hundreds of thousands of jobs."

Narrator: "Then he gave his political backers billions — a big government fiasco infused with politics at every level. 500 million to Solyndra — now bankrupt.

Nearly 100 million to a pet project teetering on default. Laid-off workers: forgotten. Typical Washington. Tell President Obama we need jobs, not more insider deals."

Crossroads GPS argues in its response that none of the above communications can be classified as express advocacy under either 11 C.F.R. §§ 100.22(a) or 100.22(b), or as the functional equivalent of express advocacy under *Wisconsin Right to Life, Inc. v. FEC*, 551 U.S. 449 (2007), and therefore none of them constitute federal campaign activity. Resp. at 9-11; Supp. Resp. at 11. As discussed above, however, that argument fails to come to terms with the Commission's longstanding view — upheld by the courts — that the required major purpose test is not limited solely to express advocacy (or the functional equivalent of express advocacy).

⁵¹ <http://www.youtube.com/watch?v=Qy5eBX7t6XM>. Crossroads GPS spent \$65,000 on the ad. <http://www.crossroadsgps.org/2012/02/crossroads-gps-launches-new-radio-ad-targeting-claire-mccaskills-tone-deaf-support-for-president-obamas-policies/>.

⁵² <http://www.crossroadsgps.org/2012/02/crossroads-gps-launches-new-ad-every-level/>. Crossroads GPS spent \$500,000 on the ad. <http://www.crossroadsgps.org/2012/02/crossroads-gps-launches-new-tv-ad-on-solyndra-fiasco/>. Crossroads GPS reported \$74,670 of this total as electioneering communications. Form 9 (Feb. 22, 2012) (\$40,401); Form 9 (Feb. 23, 2012) (\$31,218); Form 9 (Feb. 23, 2012) (\$3,049).

1 Each of the Crossroads GPS ads features a clearly identified federal candidate, supports or
2 opposes a candidate, and was run in the candidate's respective state or congressional district
3 shortly before a primary or general election. The fact that the ads do not contain express
4 advocacy, or the functional equivalent, does not shield such ads from consideration under the
5 major purpose test.⁵³

6 Nor does *Buckley* support an argument that determining an organization's major purpose
7 is limited to consideration of its express advocacy. The Court first established the major purpose
8 test in the context of its discussion of section 434(e) — a provision that required the disclosure of
9 expenditures by persons *other* than political committees. In order to cure vagueness concerns in
10 that section, the Court construed "expenditure" to reach only express advocacy. *Id.* at 79-80. By
11 contrast, limiting which expenditures *political committees* would have to disclose, the Court held
12 that the term "political committee" — as defined in section 431(4) — "need only encompass
13 organizations that are under the control of a candidate or the major purpose of which is the
14 nomination or election of a candidate." *Id.* at 79. Thus, the two limitations were imposed on two
15 different terms in two different sections of the Act: (1) "express advocacy" as a limitation on
16 "expenditures" made by persons other than political committees pursuant to section 434(e); and
17 (2) "major purpose" as a limitation on the definition of "political committee" pursuant to section
18 431(4). The opinion could have articulated a test that linked the limitations — requiring, for
19 example, that to be considered a political committee an organization's "major purposed must be
20 to *expressly advocate* the nomination or election of a candidate." But the Court did not take that
21 tack. Indeed, the Court noted that even "*partisan committees*," which include "groups within the

⁵³ Similarly, the fact that some of the ads contain a tag line requesting that the viewer call the candidate and tell the candidate to take certain action (e.g., "Tell Congressman Boswell to get his head out of the clouds and stop out of control Washington spending.") does not immunize the communications from being considered federal campaign activity when determining major purpose.

1 control of the candidate or *primarily organized for political activities*” would fall outside the
2 definition of “political committee” *only* if they fail to meet the statutory spending threshold. *Id.*
3 at 80, n.107 (emphasis added).

4 Similarly, in *MCFL*, the Court’s opinion nowhere suggests that express advocacy
5 communications are the only kind of “campaign activity” that can satisfy the major purpose test.
6 See *MCFL*, 479 U.S. at 252-53, 262 (political committee requirements inapplicable to
7 “organizations whose major purpose is not *campaign advocacy*,” but “political committee” does
8 include organizations with a major purpose of “*campaign activity*”) (emphasis added). And
9 many lower federal courts have likewise decided that a determination of major purpose is not
10 restricted to consideration of a group’s express advocacy as compared to its other activities.⁵⁴

11 Concerning the time frame under which a group’s spending should be considered,
12 Crossroads GPS argues that “political committee status has been judged in the past according to
13 whatever time frame is most appropriate to the case at hand, as opposed to simply applying an

⁵⁴ See *North Carolina Right to Life v. Leake*, 525 F.3d 274, 289 (4th Cir. 2008) (major purpose test may be implemented by examining, *inter alia*, “if the organization spends the majority of its money on *supporting or opposing* candidates”) (emphasis added); *Akins v. FEC*, 101 F.3d 731, 742 (D.C. Cir. 1997) (“an organization devoted almost entirely to *campaign spending* could not plead that the administrative burdens associated with such spending were unconstitutional as applied to it”) (emphasis added), *vacated on other grounds*, 524 U.S. 11 (1998); *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 393 (D.C. Cir. 1981) (recognizing “the grave constitutional difficulties inherent in construing the term ‘political committee’ to include groups whose activities are not . . . directly related to *promoting or defeating* a clearly identified ‘candidate’ for federal office”) (emphasis added); *RTAA*, 796 F. Supp. 2d 736, 751 (E.D. Va. 2011) (Recognizing that “the FEC considers whether the group spends money extensively on campaign activities such as canvassing or phone banks, or on express advocacy communications” and “the FEC is entitled to consider the full range of an organization’s activities in deciding whether it is a political committee”), *affirmed by* 681 F.3d 544 (4th Cir. June 12, 2012); *Free Speech v. FEC*, 720 F.3d 788 (10th Cir. 2013), *petition for cert. filed* (No. 13-772). But see *New Mexico Youth Organized v. Herrera*, 611 F.3d 669, 678 (10th Cir. 2010) (interpreting *Buckley*’s major purpose test as establishing that regulation as a political committee is only constitutionally permissible (1) when an organization’s central purpose is “campaign or election related”; or (2) when a “preponderance of [the organization’s] expenditures is for express advocacy or contributions to candidates.”); Statement of Reasons, Comm’rs. Petersen and Hunter at 6, MUR 5842 (Economic Freedom Fund) (interpreting the Court’s major purpose requirement to mean that “the Act does not reach those ‘engaged purely in issue discussion,’ but instead can only reach . . . ‘communications that expressly advocate the election or defeat of a clearly identified candidate’”) (citing *Buckley*, 424 U.S. at 79-80); see also *Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1154 (10th Cir. 2007) (holding a Colorado statute unconstitutional as applied because it “would, as a matter of common sense, operate to encompass a variety of entities based on an expenditure that is insubstantial in relation to their overall budgets”).

1 inflexible or predetermined time frame (such as the full calendar year in which the activity at
2 issue occurred).” Supp. Resp. at 3. Even assuming that is correct, the “most appropriate”
3 timeframe provides little guidance and lacks a footing in the Act, judicial decisions, or
4 Commission precedents. Rather, as the Supplemental E&J stated, settled MURs “provide
5 considerable guidance to all organizations” regarding the application of the major purpose test
6 and “reduce any claim of uncertainty because concrete factual examples of the Committee’s
7 political committee analysis are now part of the public record.” Supplemental E&J at 5595,
8 5604. Accordingly, we look to those cases to apply the major purpose test.

9 A calendar year provides the firmest statutory footing for the Commission’s major
10 purpose determination — and is consistent with the Act’s plain language. The Act defines
11 “political committee” in terms of expenditures made or contributions received “*during a*
12 *calendar year.*” 2 U.S.C. § 431(4) (emphasis added). Additionally, in *Malenick*, the court’s
13 holding specifically addressed only one calendar year (1996) because that was the only year
14 during which Triad received \$1,000 in contributions. 310 F. Supp. 2d 230, 237 (D.D.C. 2004)
15 (“Accordingly, because Triad and then Triad Inc.’s major purpose was the nomination or
16 election of specific candidates *in 1996*, and because Triad received contributions aggregating
17 more than \$1,000 *in 1996*, I find that Triad and Triad, Inc., operated as a ‘political committee’ *in*
18 *1996.*”) (emphasis added); *see also GOPAC*, 917 F.Supp. 851, 853 (group founded in 1979, yet
19 court discusses major purpose only in 1989 and 1990). That the *Malenick* decision, which is
20 cited by the 2007 Supplemental E&J, used a calendar year approach confirms that such an
21 approach to major purpose is consistent with both the statutory language and *Buckley*’s judicial
22 gloss on that language. Such an approach is further reflected in several MURs, including those
23 referenced in the 2007 Supplemental E&J as guidance for the Commission’s major purpose test,

1 in which the Commission only considered groups' spending over the period leading up to an
2 election, an approach that is largely consistent with a calendar year approach.⁵⁵

3 Although no time frame aligns perfectly with every past enforcement action,⁵⁶ a calendar
4 year approach falls squarely within the relevant precedent.⁵⁷ Thus, whether Crossroads GPS had
5 the requisite major purpose should be determined by reference to its activities during the 2012
6 calendar year.

7 * * * *

⁵⁵ See MUR 5492 (Freedom, Inc.) (analyzing group's admitted major purpose in 2004 even though group was formed in 1962); MURs 5577 and 5620 (National Association of Realtors – 527 Fund) (analyzing NAR-527 Fund's 2004 spending even though group had registered with IRS since 2000); MUR 5755 (New Democrat Network) (analyzing New Democrat Network's 2004 spending while group had existed since at least 1996); MUR 5753 (League of Conservation Voters) (analyzing LCV's 2004 spending even though one of LCV's funds had registered with the IRS as early as 2000); see also MURs 5694, 5910 (Americans for Job Security) (analyzing activity from 2000 through 2006 in determining group's major purpose in 2006, despite the fact that the group was founded in 1997); MUR 5487 (Progress for America VF) (analyzing group's major purpose based on 2004 disbursements where group had raised \$4.6 million and spent \$11.2 million through 2006). Frequently a group's spending only occurs during the calendar year of an election, forming the sole basis for deciding whether its spending has triggered major purpose. See MURs 5511 and 5525 (Swift Boat Veterans and POWs for Truth) (only activity of group was in 2004); MUR 5541 (November Fund) (only activity of group was in 2004); MUR 5568 (Empower Illinois) (only activity of group was in 2004); MURs 5977 and 6005 (American Leadership Project) (only activity of group was in 2008); MUR 6317 (Utah Defenders of Constitutional Integrity) (only activity of group was in 2010).

⁵⁶ The Commission has determined previously that analyzing major purpose on the basis of an entity's fiscal year would be inappropriate, as "neither FECA, as amended, nor any judicial decision interpreting it, has substituted tax status for the conduct-based determination required for political committee status." Supplemental E&J at 5598.

⁵⁷ The identification of a calendar year as the timeframe for applying the major purpose test, like all aspects of the major purpose test, is "a creature of statutory interpretation." See *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 487 (7th Cir. 2012). Because the definition of political committee under 2 U.S.C. § 431(4)(a) specifies the calendar year, using the same period to determine major purpose merely implements that statutory choice. It is not a rulemaking under the APA.

In some matters, OGC or the Commission may not have had a complete record about a group's spending and therefore made reference to spending outside of a calendar year. See First Gen. Counsel's Rpt., MURs 5694, 5910 (Americans for Job Security) (stating "we do not know the full scope of AJS's disbursements" but noting allegations that \$3.8 million out of \$6 million in 2004 spending was on media, while 78% of AJS's activity from 2000 through 2006 was for "political advertising campaign"); Conciliation Agreement, MUR 5487 (Progress for America VF) (analyzing group's major purpose based on 2004 disbursements, 60% of which were spent on nine television advertisements, while noting that the group had also raised \$4.6 million and spent \$11.2 million after the 2004 election through 2006). Nonetheless, the analysis of major purpose specifically referenced the relevant 2004 calendar year spending of those groups. That the Commission acknowledged the facts before it in those cases does not undermine the calendar year approach. To the contrary, as noted, the Commission's analysis in those two MURs tends to support the calendar year approach.

1 In sum, Crossroads GPS appears to have spent approximately \$138,646,864 during 2012
2 on the type of communications that the Commission considered to be federal campaign activity,
3 and therefore indicative of major purpose, in past enforcement decisions. Crossroads GPS
4 estimates that it spent \$188,886,899 during calendar year 2012. Supp. Resp. at 9. Based on the
5 available information, the amount Crossroads GPS spent on federal campaign activity is
6 approximately 73.4 % of Crossroads GPS's total spending for calendar year 2012. As a result,
7 Crossroads GPS's spending shows that the group's major purpose during 2012 was federal
8 campaign activity (*i.e.*, the nomination or election of a federal candidate).⁵⁸

9 C. Conclusion

10 Crossroads GPS made over \$1,000 in expenditures during 2012, and its spending during
11 that calendar year indicates that it had as its major purpose federal campaign activity (*i.e.*, the
12 nomination or election of federal candidates). Accordingly, the Commission finds reason to
13 believe that Crossroads GPS violated 2 U.S.C. §§ 432, 433, and 434, by failing to organize,
14 register, and report as a political committee, and authorizes an investigation.
15
16

⁵⁸ Crossroads GPS argues that its spending on independent expenditures does not constitute the majority of its activity when compared to its total spending since its founding in June 2010. Supp. Resp. at 8-9. But major purpose appears to be satisfied even if we were to analyze Crossroads GPS's spending over the organization's entire active life. Crossroads GPS estimates that it spent \$253,607,413 "over the life of the organization (through 2012)." Supp. Resp. at 9. Crossroads GPS's 2012 spending on federal campaign activity thus accounted for 55% of the amount it spent during its entire active life (through 2012). In reaching this conclusion, we do not intend to express the view that a finding of major purpose requires clearance of a 50% threshold, but only that the spending on federal campaign activity in this case is alone sufficient to support a finding of major purpose.